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

FORM 10-K

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

For the fiscal year ended: December 31, 2019

☐ **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 001-36150

SORRENTO THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**33-0344842**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
4955 Directors Place **San Diego, California**	**92121**
(Address of Principal Executive Offices)	(Zip Code)

(858) 203-4100
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol (s)**	**Name of exchange on which registered**
Common Stock, par value $0.0001 per share	SRNE	The Nasdaq Stock Market LLC

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 Exchange 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 (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

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

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

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

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

The aggregate market value of voting stock held by non-affiliates of the registrant is calculated based upon the closing sale price of the common stock on June 28, 2019 (the last trading day of the registrant's second fiscal quarter of 2019), as reported on the Nasdaq Capital Market, was approximately $307.8 million.

At February 14, 2020, the registrant had 181,340,344 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SORRENTO THERAPEUTICS, INC.

ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2019

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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, or Form 10-K, contains "forward-looking statements" that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially and adversely from those expressed or implied by such forward-looking statements. The forward-looking statements are contained principally in Item 1—"Business," Item 1.A—"Risk Factors" and Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations" but appear throughout the Form 10-K. Examples of forward-looking statements include, but are not limited to our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. These statements are often identified by the use of words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "opportunity," "plan," "potential," "predicts," "seek," "should," "will," or "would," and similar expressions and variations or negatives of these words. These forward-looking statements are based on the expectations, estimates, projections, beliefs and assumptions of our management based on information currently available to management, all of which are subject to change. Such forward-looking statements are subject to risks, uncertainties and other factors that are difficult to predict and could cause our actual results and the timing of certain events to differ materially and adversely from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed under Item 1.A—"Risk Factors" in this Annual Report on Form 10-K. Furthermore, such forward-looking statements speak only as of the date of this Annual Report on Form 10-K. We undertake no obligation to update or revise publicly any forward-looking statements to reflect events or circumstances after the date of such statements for any reason, except as otherwise required by law.

PART I

Item 1. Business.

Overview

Sorrento Therapeutics, Inc. (Nasdaq: SRNE), together with its subsidiaries (collectively, the "Company", "we", "us" and "our") is a clinical stage and commercial biopharma company focused on delivering innovative and clinically meaningful therapies to patients and their families to address unmet medical needs. We also have programs assessing the use of our technologies and products in autoimmune, inflammatory and neurodegenerative diseases.

At our core, we are an antibody-centric company and leverage our proprietary G-MAB™ library and targeted delivery modalities to generate the next generation of cancer therapeutics. Our fully human antibodies include PD-1, PD-L1, CD38, CD123, CD47, CTLA-4, c-MET, VEGFR2, CCR2 and CD137 among others.

Our vision is to leverage these antibodies in conjunction with proprietary targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary chimeric antigen receptor T-cell therapy ("CAR-T"), dimeric antigen receptor T-cell therapy ("DAR-T"), antibody drug conjugates ("ADCs") as well as bispecific antibody approaches. We acquired Sofusa®, a revolutionary drug delivery system, in July 2018, which delivers biologics directly into the lymphatic system to potentially achieve improved efficacy and fewer adverse effects than standard parenteral immunotherapy. Additionally, our majority owned subsidiary, Scilex Holding Company ("Scilex Holding"), acquired the assets of Semnur Pharmaceuticals, Inc. ("Semnur") in March 2019. Semnur's SEMDEXA™ (SP-102) compound has the potential to become the first FDA-approved epidural steroid product for the treatment of sciatica.

With each of our clinical and pre-clinical programs, we aim to tailor our therapies to treat specific stages in the evolution of cancer, from elimination, to equilibrium and escape. In addition, our objective is to focus on tumors that are resistant to current treatments and where we can design focused trials based on a genetic signature or biomarker to ensure patients have the best chance of a durable and significant response. We have several immuno-oncology programs that are in or near to entering the clinic. These include cellular therapies, an oncolytic virus and a palliative care program targeted to treat intractable cancer pain. Our cellular therapy programs focus on CAR-T for adoptive cellular immunotherapy to treat both solid and liquid tumors. We have reported early data from Phase I trials of our carcinoembryonic antigen ("CEA")-directed CAR-T program. We have treated five patients with stage 4, unresectable adenocarcinoma (four with pancreatic and one with colorectal cancer) and CEA-positive liver metastases with anti-CEA CAR-T. We successfully submitted an Investigational New Drug application ("IND") for anti-CD38 CAR-T for the treatment of refractory or relapsed multiple myeloma ("RRMM") and obtained approval from the U.S. Food and Drug Administration (the "FDA") to commence a human clinical trial for this indication in early 2018. We have dosed five patients and are continuing the enrollment of additional patients.

Broadly speaking, we believe we are one of the world's leading CAR-T and DAR-T companies today due to our investments in technology and infrastructure, which have enabled significant progress in developing our next-generation non-viral, "off-the-shelf" allogeneic DAR-T solutions. With "off-the-shelf" solutions, DAR-T therapy can truly become a drug product rather than a treatment procedure. One of the approaches we have taken to develop the "off-the-shelf" allogeneic CAR-T solutions is through Celularity, Inc., our joint venture with Celgene, United Therapeutics and others, or Celularity. Celularity focuses on developing cell therapies with placenta-derived and cord blood T cells, which have natural allogeneic "off-the-shelf" characteristics.

Outside of immune-oncology programs, as part of our global aim to provide a wide range of therapeutic products to meet underserved markets, we have made investments in non-opioid pain management. These include resiniferatoxin ("RTX"), which is a non-opioid-based toxin that specifically ablates nerves that conduct chronic and inflammatory pain signals while leaving other nerve functions intact and is being studied for chronic pain treatment. RTX has been granted orphan drug status for the treatment of intractable pain with end-stage cancer and two Phase I trials (intrathecal and epidural routes) in that indication are concluding. A Phase Ib trial studying tolerance and efficacy of RTX for the control of osteoarthritis knee pain was initiated in late 2018 and intermediate results have shown efficacy with no dose limiting toxicities. The osteoarthritis trial enrolled the last patient in the first quarter of 2020. Clinical data is expected to be available soon after the last patient enrolled completes the day 84 visit (end-point) at the end of April 2020. Knee arthritis registrational trials are planned to start later in the first half of 2020 with an Australia/USA Phase III trial, pending meeting with the FDA and receiving clearance to proceed.

In the area of non-opioid pain management, we have in-house developed and acquired proprietary technologies to responsibly develop next generation, branded pharmaceutical products to better manage patients' medical conditions and maximize the quality of life of patients and healthcare providers. The flagship product of our majority-owned subsidiary, Scilex Pharmaceuticals Inc. ("Scilex Pharma"), ZTlido® (lidocaine topical system 1.8%) ("ZTlido"), is a next-generation lidocaine delivery system which was approved by the FDA for the treatment of postherpetic neuralgia ("PHN"), a severe neuropathic pain condition, in February 2018, and was commercially launched in late October 2018. Scilex Pharma has now built a full commercial organization, which includes sales, marketing, market access, and medical affairs. ZTlido has demonstrated superior adhesion in comparative head-to-head studies as compared to Lidoderm and is manufactured by our Japanese partner in their state-of-the-art manufacturing facility.

Our Strategy

Our primary goal is to deliver clinically meaningful therapies to patients and their families, globally. In immuno-oncology, we aim to deliver next generation therapeutics to transform cancer into a treatable or chronically manageable disease. Across all our programs, we are focused on addressing severe unmet medical needs where our therapies can change the natural course of disease or significantly improve a patient's quality of life.

Our core strategic objectives and resources are focused on:

1. Rapidly advancing our lead product candidates through the clinic. These include the initiation of Phase I, Phase II and potentially accelerated approval trials for our cellular therapies and oncolytic virus immunotherapy in oncology and/or hematology indications. Our clinical-state RTX program will be developed in several pain indications with high-unmet medical needs.

2. Continuing the development of our preclinical programs with the aim of filing several new INDs over the next 12-18 months. These include moving our checkpoint inhibitors from our core antibody portfolio into the clinic either ourselves or with our strategic partners. Also, we will utilize our fully human antibody portfolio for the development of ADCs and bispecific antibodies ("BsAbs"). In addition, we plan to start several clinical trials with the Sofusa® device to explore safety and efficacy features of this innovative drug delivery technology.

3. Collaborating with key opinion leaders and leading clinical and research institutes to enhance our preclinical and clinical development plans. We currently have such agreements in place with the Karolinska Institute, The Scripps Research Institute ("TSRI"), the National Institutes of Health ("NIH"), City of Hope and Tufts Medical School, among others.

4. Manufacturing our preclinical and clinical materials in-house. We have established quality control and quality assurance programs, which include standard operating procedures and specifications designed to ensure that our products are manufactured in accordance with current good manufacturing practices ("cGMPs"), and other applicable domestic and foreign regulations.

5. Exploring strategic partnerships to share in the risk reward of our core franchises and to derive near term value from our non-core programs. Our partnering objectives include generating revenue through license fees, milestone-related development fees and royalties as well as profit shares or joint ventures to generate potential returns from our product candidates and technologies.

Segment Information

Effective January 1, 2019, we realigned our business into two new operating and reportable segments, Sorrento Therapeutics and Scilex.

Sorrento Therapeutics. The Sorrento Therapeutics segment is organized around our Immune-Oncology therapeutic area, leveraging our proprietary G-MAB™ antibody library and targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary chimeric antigen receptor T-cell therapy ("CAR-T"), dimeric antigen receptor T-cell therapy ("DAR-T"), antibody drug conjugates ("ADCs") as well as bispecific antibody approaches. Additionally, this segment also includes Sofusa®, a drug delivery technology that delivers biologics directly into the lymphatic system to potentially achieve improved efficacy and fewer adverse effects than standard parenteral immunotherapy, and resiniferatoxin ("RTX"), which is a non-opioid-based neurotoxin currently in clinical trials for late stage cancer pain and moderate to severe osteoarthritis of the knee pain.

Scilex. The Scilex segment is largely organized around our non-opioid pain management operations. Revenues from the Scilex segment are exclusively derived from the sale of ZTlido.

Clinical Programs

CD38 Directed CAR-T Program

Our proprietary, second generation anti-CD38 CAR-T therapy is being developed for the treatment of multiple myeloma and for additional potential indications, including amyloidosis and graft-versus-host disease. Our anti-CD38 CAR-T is based on a fully human anti-CD38 mAb derived from our G-MAB™ antibody library.

The membrane glycoprotein CD38 is widely found on the surface of lymphoid and myeloid lineages including B, T and NK cells, but absent from most mature resting lymphocytes with the notable exception of terminally differentiated plasma cells. Because CD38 is highly expressed on multiple myeloma cells, it represents a valuable and validated therapeutic target against myeloma. Multiple myeloma is a hematologic malignancy in which clonal plasma cells accumulate in the bone marrow or extramedullary sites and give rise to clinical complications such as painful, lytic bone lesions, hypercalcemia, renal impairment, cytopenias, and symptomatic plasmacytomas.

The American Cancer Society estimated 32,270 new cases and 12,830 deaths from multiple myeloma in the U.S. during 2020. The anti-CD38 monoclonal antibody DARZALEX® (daratumumab), marketed by Janssen Oncology, was granted accelerated approval by the FDA for the treatment of multiple myeloma on November 16, 2015. Worldwide net sales of DARZALEX® were $1.2 billion in 2017 and $2 billion in 2018. We are encouraged by the validation of this important target in the market for multiple myeloma therapeutics and its rapid adoption by clinicians in the myeloma community. We believe our CD38 cellular therapy will provide an additional significant advance in the CD38 blockade for multiple myeloma patients that are resistant or have failed current therapies.

In a xenograft mouse model of human myeloma, we demonstrated that CD38-expressing multiple myeloma tumor cells were efficiently killed and tumors were completely eradicated by our anti-CD38 CAR-T. Importantly, these anti-CD38 CAR-T cells selectively killed multiple myeloma target cells expressing high levels of CD38 while avoiding the killing of cells with normal or low levels of CD38. We believe this unique characteristic may result in a more tolerable safety profile in humans and enable a more effective manufacturing process of our anti-CD38 CAR-T cells since we do not anticipate requiring a genetic CD38 knock-out or knock-down in our construct. We have successfully submitted an IND for anti-CD38 CAR-T for the treatment of RRMM and have obtained approval from the FDA to commence a human clinical trial for this indication. We began an anti-CD38 CAR-T clinical trial with RRMM patients in 2018 and recruitment continues in the dose-escalation phase of the study. There has been evidence of CAR-T cell activation and early signs of efficacy at low doses of the anti-CD38 CAR-T cells.

Resiniferatoxin (RTX) Programs

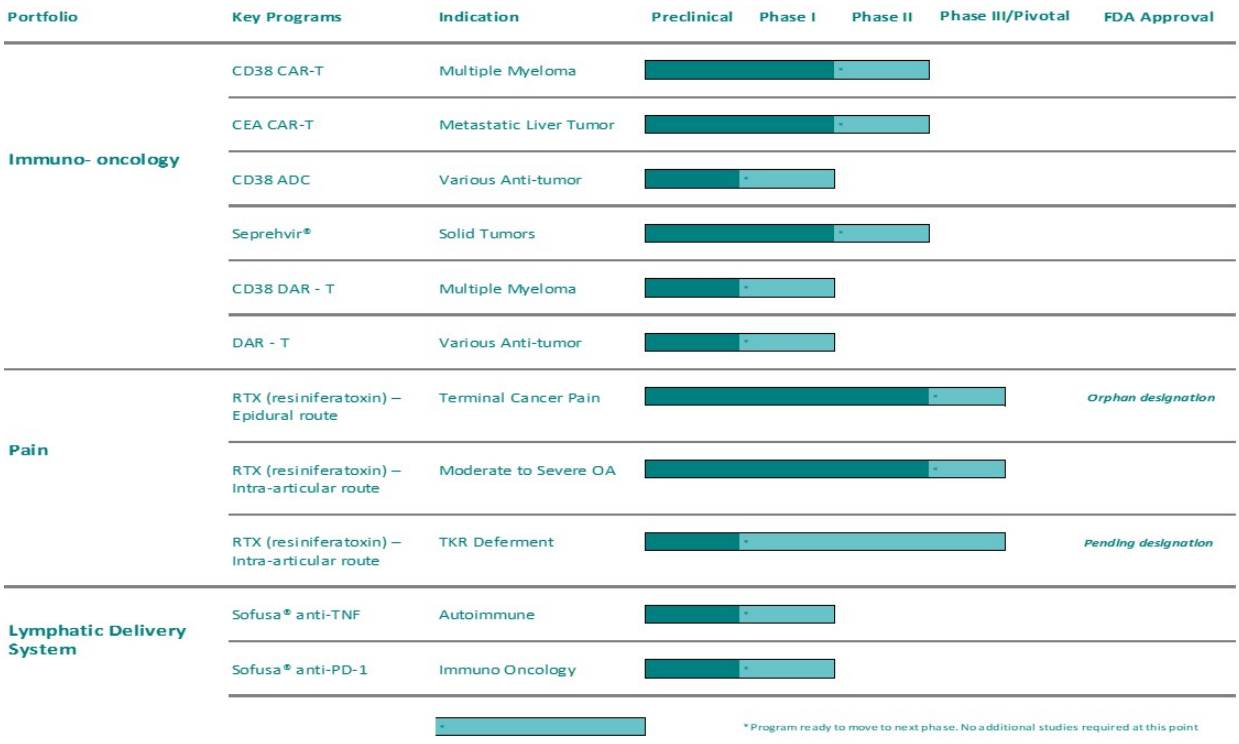
RTX is a naturally occurring compound obtained from cactus-like succulents of the Euphorbia species. An ultra-potent TRPV1 agonist, RTX belongs to the same general vanilloid compound family as capsaicin, the active ingredient in red chili peppers. As an agonist, RTX produces a sustained opening of calcium channels located in the end-terminal or cell body of C-fiber nerves (depending upon the route of administration). This, in turn, generates a slow and sustained cation influx into the nerve resulting in rapid cytotoxicity and ablation of TRPV1-positive cells that conduct pain signals, while leaving non-TPVR1 containing nerves (touch, motor control, joint position) intact. RTX is differentiated from other agonists, including capsaicin, in that it is significantly more capable at ablating nerves without inducing excitation of the neuron. In fact, it has been proposed that because of RTX`s unique mode of action it may lead to a briefer noxious (e.g., painful) period immediately after exposure.

RTX was tested in an investigator-sponsored Phase I clinical trial at the NIH under a Cooperative Research and Development Agreement ("CRADA"). To date, 14 patients with terminal cancer pain have been treated intrathecally at the NIH. A second sponsor-led trial for the control of intractable cancer pain is assessing the tolerance and efficacy of RTX administered epidurally. This dose-escalation trial is progressing and 15 patients have been enrolled thus far, with 2 patients remaining to enroll towards completing the study.

More recent studies in animals (translational work from our animal health subsidiary) have unveiled the clinical potential of RTX intra-articular injections for the control of pain associated with moderate to severe arthritis. Safety studies have been completed and a Phase I clinical trial in humans started in the second half of 2018. Significant activity in relieving pain associated with severe osteoarthritis of the knee was observed with no dose limiting toxicities at any of the administered dose. Ninety-three patients have enrolled and the study enrollment has completed in January 2020.

Two independent Phase III pivotal trials are planned in 2020 with the first one to start as early as the first half of 2020. The trials are targeted to complete enrollment within 12 to 18 months - advancing the program closer to a regulatory filing by 2023 or earlier.

RTX is being manufactured under cGMP and we have sufficient drug product to complete the clinical development programs across multiple additional indications. We have also secured enough raw materials for the drug production to cover the commercial needs for several years and additional contracts are in progress to ensure long-term commercial supplies.



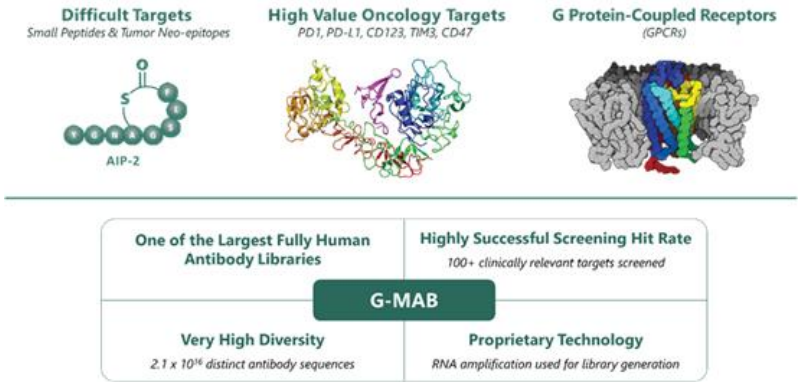
Technologies and Preclinical Pipeline

G-MAB™: Fully Human Antibody Library Platform

Our G-MAB™ library, which forms the backbone of many of our product candidates, was initially invented by Henry Ji, Ph.D., our co-founder, President and Chief Executive Officer. We believe our proprietary G-MAB™ library is one of the industry's largest and most diverse fully human antibody libraries, with an estimated one quadrillion unique antibodies available for drug discovery and development. We believe G-MAB™ may offer the following advantages over competing antibody libraries:

- G-MAB™ has been designed to provide a full spectrum of human immunoglobulin gene recombination in fully-human mAbs. Unlike chimeric and humanization technologies, G-MAB™ has allowed the generation of antibodies with fully-human protein sequences without the challenges and limitations of animal-to-human gene transfer procedures.
- Because G-MAB™ represents an *in vitro* human mAb library technology, research suggests that it enables faster and cost-effective *in vitro* screening of a large number of antigens. G-MAB™ is designed so that any antigen of interest can be investigated, with no dependence on the successful induction of a host immune response against the antigen.

The following is a depiction of the types of fully human mAbs that we have derived from G-MAB™. It includes antibodies that bind to a wide range of targets, from small molecular weight antigens to large protein complexes antigens, such as G-Protein Coupled Receptors ("GPCRs"), a difficult class of antigens to raise therapeutic antibodies against.



Our objective is to leverage G-MAB™ to develop first in class or best in class antibody drug candidates that will possess greater efficacy and fewer side effects as compared to existing drugs and develop them as novel monotherapies, ADCs (such as c-MET), components of bispecific antibodies, and as part of our adoptive immunotherapy (CD38, BCMA), oncolytic virus program and intracellular targeting programs (STAT3, mutant KRAS).

To date, we have screened over 100 validated targets and generated a number of fully human antibodies against these targets which are at various stages of development. These include PD-1, PD-L1, CD38, BCMA, CTLA-4, CD123, CD47, c-MET, VEGFR2, CCR2 and CD137 among others. Upon the completion of preclinical studies, our objective is to, independently or in tandem with our strategic collaborators, file INDs for these product candidates.

The following diagrams highlight our key antibody-related strategic partnerships and programs:

	Partner	Asset Type	Partner Background	Partnership Details
yuhan	**Yuhan Corporation**	Immuno-Oncology	• Yuhan Corporation is one of the largest Korean pharmaceutical companies founded over 80 years ago	• Joint Venture named ImmuneOncia Therapeutics, LLC • Focused on developing and commercializing a number of immune checkpoint antibodies for hematological malignancies and solid tumors
LEE'S PHARM.	**Lee's Pharmaceutical Holdings**	Immuno-Oncology	• Lee's Pharm is a public biopharma company with over 20 years of operation in China and currently markets 14 products in the PRC	• Sorrento has licensed exclusive rights to Lee's Pharma to develop and commercialize the fully human anti-PD-L1 mAb STI-A1014 for the greater Chinese market
morphotek Eisai	**Morphotek (Eisai)**	ADC	• Morphotek, a subsidiary of Eisai, Inc., specializes in the development of protein and antibody products through the use of a novel and proprietary gene evolution technology	• Collaboration agreement for Concortis (Sorrento) and Morphotek to generate novel ADCs based on a Morphotek antibody linked to chemotherapeutic agents using Concortis' proprietary ADC technology
CELULARITY	**Celularity**	Cellular Therapy	• Celularity is a joint venture utilizing TNK's CAR constructs for use in placenta-derived and cord-blood derived cells	• License of product rights to Celularity in exchange for equity

Dimeric Antigen Receptor ("DAR") Technology

Chimeric antigen receptors ("CARs") have been created for commercial and clinical development programs in the industry, so there is strong proof-of-concept for this approach, but there are also disadvantages with this technology. The architecture of the CAR consists of a single fusion protein with several functional components: a single-chain variable fragment ("scFv") derived from an anti-tumor antibody fused to a structural support segment, a transmembrane portion, and one or more intracellular signaling domains. Potential drawbacks of the CAR technology are the use of scFv that often possess inferior biophysical stability and biochemical functionality compared to their parental antibodies.

We are addressing these potential weaknesses while building on the clinical experience generated within our current CAR-T programs with the design of DARs that are based on the complete antigen-binding fragment ("Fab") of the parental antibody. It is generally accepted that Fabs more closely mimic the functional and biophysical properties of natural antibodies. Utilizing the same antibody binding domain sequence, we have compared CAR constructs with a scFv binding domain to a DAR construct with an Fab or two chain binding domain. Our data showed that the DAR-T cells exhibited a higher functional activity with regards to cytokine production, and cytotoxicity against target-expressing tumor cells compared to CAR-T cells. In preclinical mouse models, the DAR-T cells demonstrated increased anti-tumor potency as well.

We are currently applying our DAR technology to our ongoing cell therapy programs for multiple hematological and solid tumor indications, including but not limited to: multiple myeloma, lymphoma, liver cancer, sarcoma, pancreatic cancer and glioma. We submitted the IND for our lead DAR-T, CD38 program in December 2019.

Non-viral Knock-Out, Knock-In ("KOKI") Technology

We have developed an innovative KOKI technology to introduce transgenes, for example CAR or DAR genes, into mammalian cells, such as T cells. These CAR-T cells have been evaluated and compared against CAR-T cells generated using current retrovirus transduction methodologies. Our data suggest that the non-virally generated CAR-T cells performed as well as retrovirally-transduced CAR-T cells with regard to CAR expression, cytokine production, and cytotoxicity against target-expressing tumor cells.

Our KOKI technology may offer several potential benefits over existing virus-based technology using transgene-encoding lentivirus, retrovirus or adeno-associated virus ("AAV") to introduce antigen receptor constructs into healthy donor (allogeneic) or cancer patient (autologous) T cells. These potential advantages of our non-viral KOKI technology include:

- site-specific integration of transgenes into a pre-selected locus in the T cell genome;
- streamlined method for transgene construct production without need for laborious and time-consuming virus production, release and validation processes, resulting in a shorter research and development timelines for IND-enabling activities; and
- applicability to both autologous and allogeneic cellular therapies.

We are developing our innovative KOKI technology for use in our CAR-T programs for the treatment of multiple hematological and solid tumor indications, including but not limited to: multiple myeloma, lymphoma, liver cancer, sarcoma,

pancreatic cancer and glioma. We believe our KOKI technology has the potential to enable faster development timelines, more cost-effective cGMP manufacturing and possible removal of certain regulatory requirements for both autologous and allogeneic CAR-T and DAR-T therapies.

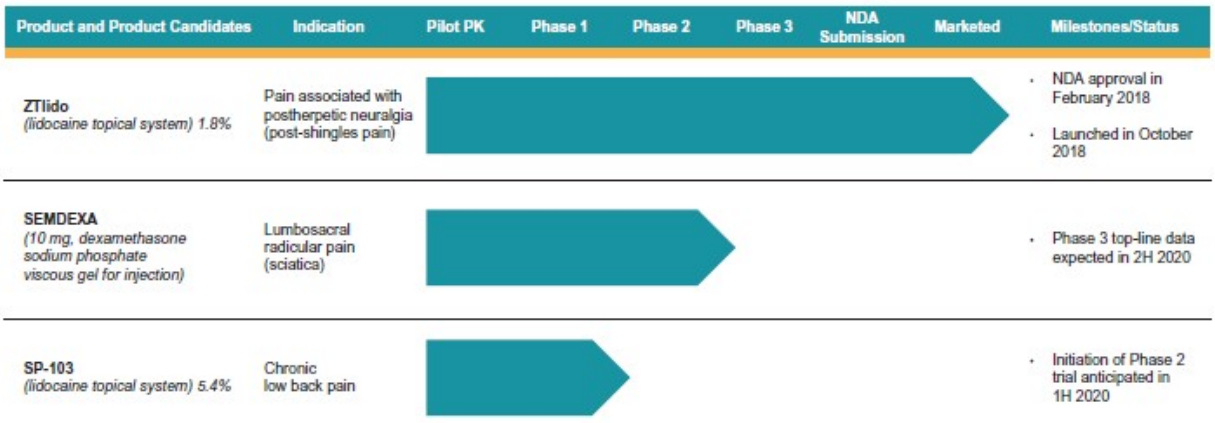
Sofusa® Lymphatic Delivery System (S-LDS)

Sofusa is a novel micro-epidermal infusion system that consists of a proprietary microneedle array and microfluidics reservoir for targeted lymphatic delivery of large molecules, such as antibodies. Abnormal immune system function is implicated in many conditions such as cancer and autoimmune diseases (e.g., Rheumatoid Arthritis, Multiple Sclerosis and Psoriasis). Drug targets for these immune system diseases are typically located in lymphatic vessels or lymph nodes. Sofusa's proprietary nanotopography draped microneedles have been shown to reversibly open tight junctions in the skin and facilitate paracellular and transcellular transport across the epidermis. An early in-vivo study demonstrated that Sofusa`s nanotopography-draped microneedles result in a 10-fold increase in serum concentrations of etanercept (Enbrel®) vs undraped hollow microneedles. We believe this enables the efficient and direct absorption of large molecule drugs directly into tiny lymphatic microcapillaries concentrated just beneath the epidermis and results in a unique biodistribution profile and significantly higher drug concentrations in the lymphatic system and lymph nodes vs traditional intravenous or subcutaneous injections.

In November 2019, we filed an IND and are authorized to proceed with our first human clinical with a checkpoint inhibitor in oncology. This study is designed to evaluate the safety and efficacy of a Sofusa anti-PD1 antibody in patients with Cutaneous T-Cell Lymphoma. In this pilot study, we will evaluate the feasibility of Sofusa delivery in patients with skin cancers accessible to biopsies for intensive biomarker assessments. These trials will help assess whether the principles of better efficacy and safety seen in lymphatic administration of drugs in animal models can be replicated in patients. If the Sofusa Lymphatic Delivery System (S-LDS) is successful in the clinic, the commercial Sofusa® DoseDisc™ wearable device may offer not only the potential for both improved clinical response, but also a more convenient dosing alternative to traditional injections or IV infusions for patients. The FDA has now approved three Sofusa INDs which will further support both internal evaluations and partnering efforts to accelerate development highly differentiated therapeutics.

Scilex Holding

Scilex Holding is focused on cost-effectively developing and commercializing non-opioid therapies that will provide safe and substantial, localized pain relief for large market opportunities. The following chart illustrates the current product and product candidates, for which Scilex Holding has worldwide commercialization rights, except with respect to Japan for ZTlido and SP-103:



ZTlido

ZTlido is a lidocaine topical system approved for the relief of pain associated with post-herpetic neuralgia ("PHN"). PHN is a chronic neuropathic pain syndrome that results as a complication following an infection of herpes zoster, also known as shingles. Herpes zoster symptoms typically resolve after a few weeks, but the pain caused by the nerve injury can persist for months to years in the affected area. ZTlido is designed as a lighter, thinner product which has improved adhesion relative to Lidoderm (lidocaine patch 5%), while providing a bioequivalent delivery of lidocaine in an efficient drug delivery system.

We launched ZTlido in October 2018 with support from an integrated commercial organization using a dedicated contract sales force and our own sales management, marketing and managed care capabilities. We market ZTlido through a dedicated sales force of 110 individuals, targeting 14,000 to 17,000 primary care physicians, pain specialists, neurologists and palliative care physicians. We are utilizing a multi-channel marketing strategy to expand awareness and utilization of ZTlido.

SEMDEXA

SEMDEXA is a Phase III product candidate we are developing to be an injectable viscous gel formulation of a widely used corticosteroid designed to address the serious risks posed by off-label epidural steroid injections, or ESIs, for the treatment of sciatica, a pathology of low back pain. We believe SEMDEXA, if successfully developed, has the potential to reduce the disability related to sciatica and help delay or avoid spine surgery. SEMDEXA has been granted fast track designation by the FDA and, if approved, could become the only FDA-approved alternative to off-label ESIs, which are administered over 10 million times annually in the United States. We are currently evaluating SEMDEXA in a pivotal Phase III Corticosteroid Lumbar Epidural Analgesia for Radiculopathy trial, which is designed to evaluate the safety and efficacy in the proposed indication. We expect top-line results from the study in the second half of 2020, and if results are positive, we intend to submit a request to the FDA for breakthrough designation.

SP-103

SP-103 is an investigational, non-aqueous lidocaine topical system undergoing clinical development in chronic low back pain conditions. SP-103 builds on the learnings from ZTlido because both products share a similar adhesive drug delivery formulation and manufacturing technology. If approved, we believe that SP-103 could become the first-in-class lidocaine topical product for chronic low back pain indications. All current uses of topical lidocaine products for chronic low back pain are off-label. SP-103 has three times the drug load of ZTlido (108 mg versus 36 mg) in the adhesive system to potentially deliver threefold level of the drug within a targeted area, still with the convenience of a single topical system. Additionally, SP-103 is designed to deliver a localized dose of lidocaine that is threefold greater than any lidocaine topical product that we are aware of either on the market or in development. If approved, we believe SP-103 may be able to address the limitations of prescription lidocaine patches in treating chronic low back pain by delivering a higher dose of lidocaine to the application site. We expect the Phase II trial to commence in the first half of 2020.

Patents and Other Proprietary Rights

We are able to protect our technology from unauthorized use by third parties only to the extent that it is covered by valid and enforceable patents, is effectively maintained as a trade secret, or is protected by confidentiality agreements. Accordingly, patents and other proprietary rights are essential elements of our business.

We have multiple issued patents and pending patent applications in the U.S. and in selected foreign jurisdictions that cover our G-MAB™ technology, G-MAB™-derived antibodies, other proprietary antibody-centric technologies, and pain management compounds, including, but not limited to, the following:

1) The G-MAB™ discovery antibody library technology. Certain aspects of this technology are covered by issued patents and are the subject matter of pending patent applications with potential patent coverage to at least 2023.

2) The G-MAB™-derived immuno-oncology antibody candidate portfolio. Certain of these antibody candidates are covered by issued patents and are the subject matter of pending patent applications and granted patents with potential patent coverage to at least 2033.

3) The bispecific antibody technology directed to the combination of two different monoclonal antibodies or fragments that can target multiple or different antigens. The bispecific antibody technology is the subject matter of pending applications with potential patent coverage to at least 2040.

4) The ADC technology using proprietary conjugation chemistries (called C-Lock™ and K-Lock™), initially developed by Concortis Biosystems, Corp. (“Concortis”), one of our subsidiaries. This ADC technology is the subject matter of pending patent applications and granted patents with potential patent coverage to at least 2033. Additional ADC directed to different antigen targets and/or toxin derivatives are the subject matter of pending patent applications and granted patents with potential patent coverage to at least 2038.

5) The chimeric antigen receptor T-cell - (CAR-T)-based technology is an immunotherapy platform and is the subject matter of pending patent applications with potential patent coverage to at least 2035. Candidates arising from the platform are the subject matter of pending applications with potential patent coverage to at least 2038.

6) The dimeric antigen receptor T-cells (DAR-T)-based technology is an allogeneic immunotherapy platform and is the subject of pending patent applications with potential patent coverage to at least 2039. Candidates arising from the platform are the subject matter of pending applications with potential patent coverage to at least 2040.

7) The oncolytic virus technology is a human herpes simplex virus (HSV)-based immunotherapy platform designed to target and destroy tumor cells while also stimulating anti-tumor patient immune responses. It is the subject of pending patent applications with potential patent coverage to at least 2036. We have filed patent applications on improvements to this technology with potential patent coverage to at least 2037.

8) The corticosteroid injectable pain management technology, which is formulated as a viscous gel injection for the treatment of lumbosacral radicular pain/sciatica, was obtained by the acquisition of Semnur Pharmaceuticals in March 2019 and it is the subject matter of pending patent applications and granted patents with potential patent coverage to at least 2036.

9) The resiniferatoxin (RTX)-based pain management technology is an experimental TRPV1 agonist agent developed as a single injection pain treatment that ablates afferent nerves that conduct pain signals while sparing other nerve functions. Certain aspects of this technology are covered by an issued patent in the U.S. providing patent protection to at least 2021 and are the subject matter of pending patent applications that will provide potential patent coverage to at least 2040.

10) The lidocaine-based pain management technology was obtained by the acquisition of Scilex Pharma. Certain aspects of this technology are covered by several issued U.S. patents, which will not expire until at least 2031. Additional patent applications to improvements of this technology have been filed and have the potential to provide patent coverage to at least 2039 and may require the completion of clinical trials that compare the cost-effectiveness.

11) The Sofusa technology was acquired from Kimberly-Clark Corporation (“KCC”); Kimberly-Clark Global Sales, LLC (“KCCGS”); and Kimberly-Clark Worldwide, Inc. (“KCCW” and together with KCC and KCCGS, “Kimberly-Clark”) in July 2018 as a novel technology platform designed to deliver large molecules, such as antibodies, directly into lymphatic capillaries and tumor draining lymph nodes. This micro-epidermal infusion system features a proprietary microneedle array and microfluidics reservoir. The Sofusa technology is the subject of multiple granted and pending applications with potential patent coverage to at least 2040.

Certain factors can either extend patent terms or provide other forms of exclusivity (e.g., data exclusivity) for varying periods depending on the date of patent filing, date of grant or the legal term of a patent in the various jurisdictions in which patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, also depends upon the type of patent, the scope of claim coverage and the availability of legal remedies in the particular country.

While trade secret protection is an essential element of our business and we have taken security measures to protect our proprietary information and trade secrets, we cannot guarantee that our unpatented proprietary technology will afford us significant commercial protection. We seek to protect our trade secrets by entering into confidentiality agreements with third parties, employees and consultants. Our employees and consultants also sign agreements requiring that they assign to us their interest in any intellectual property arising from their work for us. All employees sign an agreement not to engage in any conflicting employment or activity during their employment with us and not to disclose or misuse our confidential information. However, it is possible that these agreements may be breached or invalidated and, if so, there may not be an adequate corrective remedy. Accordingly, we cannot guarantee that employees, consultants or third parties will not breach the confidentiality provisions in our contracts, infringe or misappropriate our trade secrets or other proprietary rights, or that measures we are taking to protect our proprietary rights will be adequate.

In the future, third parties may file claims asserting that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert such claims against us or against the licensors of technology licensed to us, or whether those claims will harm our business. If we are forced to defend ourselves against such claims,

whether they are with or without merit and whether they are resolved in favor of, or against, our licensors or us, we may face costly litigation and the diversion of management's attention and resources. As a result of such disputes, we may have to develop costly non-infringing technology or enter into licensing agreements. These agreements, if necessary, may be unavailable on terms acceptable to us, or at all.

Competition

The biotechnology and pharmaceutical industries are characterized by rapidly advancing technologies, intense competition, a strong emphasis on proprietary products and intellectual property. While we believe that our scientific knowledge, technology and development experience provide us with competitive advantages, we face potential competition from many different sources, including major pharmaceutical, specialty pharmaceutical and biotechnology companies, academic institutions, governmental agencies and public and private research institutions, some or all of which may have greater access to capital or resources than we do. For any products that we may ultimately commercialize, not only will we compete with any existing therapies and those therapies currently in development, we will have to compete with new therapies that may become available in the future.

We expect that the market will become increasingly competitive in the future. Many of our competitors, either alone or together with their collaborative partners, operate larger research and development programs, and have substantially greater commercial and financial resources than we do, as well as significantly greater experience in: developing product candidates and technologies, undertaking preclinical studies and clinical trials, obtaining FDA and other regulatory approvals of product candidates, formulating and manufacturing product candidates and launching, marketing and selling product candidates. As a result, these companies may obtain marketing approval more rapidly than we are able and may be more effective in developing, selling and marketing their products.

Immunotherapy

Immunotherapy is an active area of research and several immune-related products have been identified in recent years that modulate the immune system. Many of these products utilize dendritic cells, a form of immune cell that presents cancer target peptides to T cells and that can in turn result in T-cell activation. More recently, bispecific antibodies and checkpoint inhibitors (for instance PD-1/PD-L1 antibodies) have been identified as having utility in the treatment of cancer. Bi-specific antibodies commonly target both the cancer peptide and the TCR, thus bringing both cancer cells and T cells into close proximity to maximize the chance of TCR binding and hence an immune response to the cancer cells. Checkpoint inhibitors on the other hand, work by targeting receptors that inhibit T-cell effectiveness and proliferation and thereby essentially activate T cells. Other immunotherapies that are being actively investigated include: antibody drug complexes, TCR-mimic antibodies, oncolytic viruses, cancer vaccines.

We are aware of companies developing therapies in various areas related to our specific research and development programs. Specifically, there are a growing number of pharmaceutical, biotechnology, and academic institutions researching and developing autologous and allogeneic CAR-T therapies in both the solid and liquid tumor setting. These CAR-T cell therapies are at a variety of stages of preclinical, clinical development and approval. Such therapies are directed towards a broad target spectrum, including but not limited to: DLL3, EGFR, GD2, HER-2, IL13rα2, Lewis Y, L1-CAM, Mesothelin, MUC16, PSCA, PSMA and ROR1. The two approved CAR-T therapies both target CD19. Competitors include but are not limited to: Adaptimmune Therapeutics, Allogene Therapeutics, Amgen, Atara Bio, Aurora Biopharma, Avid Biotics / Xyphos, Baylor College of Medicine, Cell Medica, Bellicum, BioNTech, Carisma Therapeutics (formerly CARMA Therapeutics), Carsgen, Cellectis Therapeutics, Celyad, CRISPR Therapeutics, Endocyte, Fate Therapeutics, Formula Therapeutics, Fred Hutchinson Cancer Research Center, Gilead, Helix BioPharma, Juno Therapeutics, MaxCyte, Memorial Sloan Kettering Cancer Center, Mustang bio, Novartis, Poseida Therapeutics, Senti Biosciences, Symvivo, Targazyme and Tmunity.

RTX

The pain management field in particular is a growing industry due to increased attention on opioid usage for pain, which has created a rapidly emerging market and has fueled an increased interest in opioid alternatives. The rise of various small and early-stage companies in the non-opioid pain management field may also prove to be significant competitors, particularly if they enter into collaborative arrangements with large, established companies.

Scilex

ZTlido and our product candidate, SP-103, if approved, face and will likely face competition from prescription and generic topical lidocaine patches, including Lidoderm and generic lidocaine patches manufactured by Teva, Mylan and Par Pharmaceutical, Inc. Additionally, SP-103, if approved, will likely compete with various opioid pain medications, NSAIDs, muscle relaxants, antidepressants and anticonvulsants, particularly as we seek approval for the treatment of chronic low back pain.

SEMDEXA, if approved, has the potential to become the first FDA-approved epidural steroid product for the treatment of sciatica. While there are currently no FDA approved ESIs indicated for the treatment of sciatica, we are aware of certain non-steroid product candidates in development. For example, Sollis Therapeutics, Inc. is developing its product candidate, a non-opioid, non-steroid clonidine micropellet to be administered through epidural injection, which is currently in Phase 3 development. SEMDEXA, if approved, will compete with various opioid pain medications, NSAIDs, muscle relaxants, antidepressants, anticonvulsants and surgical procedures. Procedures may include nerve blocks and transcutaneous electrical nerve stimulations. We may also face indirect competition from the off-label and unapproved use of branded and generic injectable steroids.

The key competitive factors affecting the success of ZTlido, SEMDEXA and SP-103 are likely to be their efficacy, durability, safety, price and the availability of reimbursement from government and other third-party payors.

Government Regulation

Government authorities in the U.S. (including federal, state and local authorities) and in other countries extensively regulate, among other things, the manufacturing, research and clinical development, marketing, labeling and packaging, storage, distribution, post-approval monitoring and reporting, advertising and promotion, pricing and export and import of pharmaceutical products, such as those we are developing. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Moreover, failure to comply with applicable regulatory requirements may result in, among other things, warning letters, clinical holds, civil or criminal penalties, recall or seizure of products, injunction, disbarment, partial or total suspension of production or withdrawal of the product from the market. Any agency or judicial enforcement action could have a material adverse effect on us.

U.S. Government Regulations

In the U.S., the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act (“FDCA”) and its implementing regulations. Drugs are also subject to other federal, state and local statutes and regulations. The process required by the FDA before product candidates may be marketed in the U.S. generally involves the following:

- submission to the FDA of an IND, which must become effective before human clinical trials may begin and must be updated annually;
- completion of extensive preclinical laboratory tests and preclinical animal studies, all performed in accordance with the FDA’s Good Laboratory Practice (“GLP”) regulations. Preclinical testing generally includes evaluation of our product candidates in the laboratory or in animals to characterize the product and determine safety and efficacy;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the product candidate for each proposed indication;
- submission to the FDA of a Biologics License Application (“BLA”) or a new drug application (“NDA”) after completion of all pivotal clinical trials;
- a determination by the FDA within 60 days of its receipt of a BLA or an NDA to file the NDA for review;
- satisfactory completion of an FDA pre-approval inspection of the manufacturing facilities at which the active pharmaceutical ingredient (“API”) and finished drug product are produced and tested to assess compliance with cGMP regulations; and
- FDA review and approval of a BLA or an NDA prior to any commercial marketing or sale of the drug in the U.S.

In addition, we are subject to regulation under state, federal, and international laws and regulations regarding occupational safety, laboratory practices, import and export of materials and products, environmental protection and the use and handling of hazardous substance control, and other regulations. Our clinical trial and research and development activities involve the controlled use of hazardous materials and chemical compounds. Although we believe that our safety procedures for handling and disposing of such materials comply with the standards prescribed by state and federal regulations, the risk of accidental contamination or injury from these materials cannot be completely eliminated. In the event of such an accident, we

could be held liable for any damages that result and any such liability could exceed our financial resources. In addition, disposal of radioactive materials used in our clinical trials and research efforts may only be made at approved facilities. We believe that we are in material compliance with all applicable laws and regulations including those relating to the handling and disposal of hazardous and toxic waste.

An IND is a request for authorization from the FDA to administer an investigational drug product to humans. The central focus of an IND submission is on the general investigational plan and the protocol(s) for human studies. The IND also includes results of animal studies or other human studies, as appropriate, as well as manufacturing information, analytical data and any available clinical data or literature to support the use of the investigational new drug. An IND must become effective before human clinical trials may begin. An IND will automatically become effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions related to the proposed clinical trials. In such a case, the IND may be placed on clinical hold and the IND sponsor and the FDA must resolve any outstanding concerns or questions before clinical trials can begin. Accordingly, submission of an IND may or may not result in the FDA allowing clinical trials to commence.

Clinical trials involve the administration of the investigational drug to human subjects under the supervision of qualified investigators in accordance with Good Clinical Practices ("GCPs"), which include the requirement that all research subjects provide their informed consent for their participation in any clinical trial. Clinical trials are conducted under protocols detailing, among other things, the objectives of the study, the parameters to be used in monitoring safety, and the efficacy criteria to be evaluated. A protocol for each clinical trial and any subsequent protocol amendments must be submitted to the FDA as part of the IND. Additionally, approval must also be obtained from each clinical trial site's institutional review board ("IRB") before the trials may be initiated, and the IRB must monitor the study until completed. There are also requirements governing the reporting of ongoing clinical trials and clinical trial results to public registries.

The clinical investigation of a drug is generally divided into three phases. Although the phases are usually conducted sequentially, they may overlap or be combined. The three phases of an investigation are as follows:

- *Phase I.* Phase I includes the initial introduction of an investigational new drug into humans. Phase I clinical trials are typically closely monitored and may be conducted in patients with the target disease or condition or in healthy volunteers. These studies are designed to evaluate the safety, dosage tolerance, metabolism and pharmacologic actions of the investigational drug in humans, the side effects associated with increasing doses, and if possible, to gain early evidence on effectiveness. During Phase I clinical trials, sufficient information about the investigational drug's pharmacokinetics and pharmacological effects may be obtained to permit the design of well-controlled and scientifically valid Phase II clinical trials. The total number of participants included in Phase I clinical trials varies, but is generally in the range of 20 to 80.

- *Phase II.* Phase II includes controlled clinical trials conducted to preliminarily or further evaluate the effectiveness of the investigational drug for a particular indication(s) in patients with the disease or condition under study, to determine dosage tolerance and optimal dosage, and to identify possible adverse side effects and safety risks associated with the drug. Phase II clinical trials are typically well-controlled, closely monitored, and conducted in a limited patient population, usually involving no more than several hundred participants.

- *Phase III.* Phase III clinical trials are generally controlled clinical trials conducted in an expanded patient population generally at geographically dispersed clinical trial sites. They are performed after preliminary evidence suggesting effectiveness of the drug has been obtained, and are intended to further evaluate dosage, clinical effectiveness and safety, to establish the overall benefit-risk relationship of the investigational drug product, and to provide an adequate basis for product approval. Phase III clinical trials usually involve several hundred to several thousand participants.

A pivotal trial is a clinical trial that adequately meets regulatory agency requirements for the evaluation of a drug candidate's efficacy and safety such that it can be used to justify the approval of the product. Generally, pivotal trials are also Phase III trials but may be Phase II trials if the trial design provides a well-controlled and reliable assessment of clinical benefit, particularly in situations where there is an unmet medical need.

The FDA, the IRB or the clinical trial sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects are being exposed to an unacceptable health risk. Additionally, some clinical trials are overseen by an independent group of qualified experts organized by the clinical trial sponsor, known as a data safety monitoring board or committee. This group provides authorization for whether or not a trial may move forward at designated

check points based on access to certain data from the study. We may also suspend or terminate a clinical trial based on evolving business objectives and/or competitive climate.

Assuming successful completion of all required testing in accordance with all applicable regulatory requirements, detailed investigational drug product information is submitted to the FDA in the form of an NDA requesting approval to market the product for one or more indications.

The application includes all relevant data available from pertinent preclinical and clinical trials, including negative or ambiguous results as well as positive findings, together with detailed information relating to the product's chemistry, manufacturing, controls and proposed labeling, among other things. Data can come from company-sponsored clinical trials intended to test the safety and effectiveness of a use of a product, or from a number of alternative sources, including studies initiated by investigators. To support marketing approval, the data submitted must be sufficient in quality and quantity to establish the safety and effectiveness of the investigational drug product to the satisfaction of the FDA.

Once the NDA submission has been accepted for filing, the FDA's goal is to review applications within ten months of submission or, if the application relates to an unmet medical need in a serious or life-threatening indication, six months from submission. The review process is often significantly extended by FDA requests for additional information or clarification. The FDA may refer the application to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it typically follows such recommendations.

After the FDA evaluates the NDA and conducts inspections of manufacturing facilities where the drug product and/or its API will be produced, it may issue an approval letter or a Complete Response Letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications. A Complete Response Letter indicates that the review cycle of the application is complete and the application is not ready for approval. A Complete Response Letter may require additional clinical data, an additional pivotal Phase III clinical trial(s), and/or other significant, expensive and time-consuming requirements related to clinical trials, preclinical studies or manufacturing. Even if such additional information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. The FDA could also approve the NDA with a Risk Evaluation and Mitigation Strategies ("REMS") plan to mitigate risks, which could include medication guides, physician communication plans, or elements to assure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. The FDA also may condition approval on, among other things, changes to proposed labeling, development of adequate controls and specifications, or a commitment to conduct one or more post-market studies or clinical trials. Such post-market testing may include Phase IV clinical trials and surveillance to further assess and monitor the product's safety and effectiveness after commercialization. Regulatory approval of oncology products often requires that patients in clinical trials be followed for long periods to determine the overall survival benefit of the drug.

After regulatory approval of a drug product is obtained, we are required to comply with a number of post-approval requirements. As a holder of an approved NDA, we would be required to report, among other things, certain adverse reactions and production problems to the FDA, to provide updated safety and efficacy information, and to comply with requirements concerning advertising and promotional labeling for any of our products. Also, quality control and manufacturing procedures must continue to conform to cGMP after approval to ensure and preserve the long term stability of the drug product. The FDA periodically inspects manufacturing facilities to assess compliance with cGMP, which imposes extensive procedural, substantive and record keeping requirements. In addition, changes to the manufacturing process are strictly regulated, and, depending on the significance of the change, may require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP and impose reporting and documentation requirements upon us and any third-party manufacturers that we may decide to use. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain compliance with cGMP and other aspects of regulatory compliance.

We rely, and expect to continue to rely, on third parties for the production, distribution, shipping and storage of clinical and commercial quantities of our product candidates. Future FDA and state inspections may identify compliance issues at our facilities or at the facilities of our contract manufacturers that may disrupt production or distribution or require substantial resources to correct. In addition, discovery of previously unknown problems with a product or the failure to comply with applicable requirements may result in restrictions on a product, manufacturer or holder of an approved NDA, including withdrawal or recall of the product from the market or other voluntary, FDA-initiated or judicial action that could delay or prohibit further marketing. Newly discovered or developed safety or effectiveness data may require changes to a product's approved labeling, including the addition of new warnings and contraindications, and also may require the implementation of other risk management measures. Also, new government requirements, including those resulting from new legislation, may be

established, or the FDA's policies may change, which could delay or prevent regulatory approval of our product candidates under development.

Europe/Rest of World Government Regulations

In addition to regulations in the U.S., we will be subject to a variety of regulations in other jurisdictions governing, among other things, clinical trials and any commercial sales and distribution of our products.

Whether or not we obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in foreign countries prior to the commencement of clinical trials or marketing of the product in those countries. Certain countries outside of the U.S. have a similar process that requires the submission of a clinical trial application much like the IND prior to the commencement of human clinical trials. In Europe, for example, a clinical trial application ("CTA") must be submitted to each country's national health authority and an independent ethics committee, much like the FDA and IRB, respectively. Once the CTA is approved in accordance with a country's requirements, clinical trial development may proceed.

The requirements and process governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. In all cases, the clinical trials are conducted in accordance with GCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

To obtain regulatory approval of an investigational drug under European Union regulatory systems, we must submit a marketing authorization application. The application used to file the NDA in the U.S. is similar to that required in Europe, with the exception of, among other things, country-specific document requirements. For other countries outside of the European Union, such as countries in Eastern Europe, Latin America or Asia, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. In all cases, again, the clinical trials are conducted in accordance with GCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

If we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution.

Available Special Regulatory Procedures

Formal Meetings

We are encouraged to engage and seek guidance from health authorities relating to the development and review of investigational drugs, as well as marketing applications. In the U.S., there are different types of official meetings that may occur between us and the FDA. Each meeting type is subject to different procedures. Conclusions and agreements from each of these meetings are captured in the official final meeting minutes issued by the FDA.

The European Medicines Agency ("EMA") also provides the opportunity for dialogue with us. This is usually done in the form of Scientific Advice, which is given by the Scientific Advice Working Party of the Committee for Medicinal Products for Human Use ("CHMP"). A fee is incurred with each Scientific Advice meeting.

Advice from either the FDA or EMA is typically provided based on questions concerning, for example, quality (chemistry, manufacturing and controls testing), nonclinical testing and clinical trials and pharmaco-vigilance plans and risk-management programs. Such advice is not legally binding on the sponsor. To obtain binding commitments from health authorities in the U.S. and the European Union, Special Protocol Assessment ("SPA") or Protocol Assistance procedures are available. An SPA is an evaluation by the FDA of a protocol with the goal of reaching an agreement with the sponsor that the protocol design, clinical endpoints and statistical analyses are acceptable to support regulatory approval of the product candidate with respect to effectiveness in the indication studied. The FDA's agreement to an SPA is binding upon the FDA except in limited circumstances, such as if the FDA identifies a substantial scientific issue essential to determining the safety or effectiveness of the product after clinical trials begin, or if the trial sponsor fails to follow the protocol that was agreed upon with the FDA. There is no guarantee that a trial will ultimately be adequate to support an approval even if the trial is subject to an SPA.

Orphan Drug Designation

The FDA may grant orphan drug designation to drugs intended to treat a rare disease or condition that affects fewer than 200,000 individuals in the U.S., or, if it affects more than 200,000 individuals in the U.S., there is no reasonable expectation that the cost of developing and making the drug for this type of disease or condition will be recovered from sales in the U.S. In the European Union, the EMA's Committee for Orphan Medicinal Products ("COMP") grants orphan drug designation to promote the development of products that are intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition affecting not more than 5 in 10,000 persons in the European Union Community. Additionally, designation is granted for products intended for the diagnosis, prevention or treatment of a life-threatening, seriously debilitating or serious and chronic condition and when, without incentives, it is unlikely that sales of the drug in the European Union would be sufficient to justify the necessary investment in developing the drug or biological product.

In the U.S., orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages and user-fee waivers. In addition, if a product receives the first FDA approval for the indication for which it has orphan designation, the product is entitled to orphan drug exclusivity, which means the FDA may not approve any other application to market the same drug for the same indication for a period of 7 years, except in limited circumstances, such as a showing of clinical superiority over the product with orphan exclusivity.

In the European Union, orphan drug designation also entitles a party to financial incentives such as reduction of fees or fee waivers and 10 years of market exclusivity is granted following drug or biological product approval. This period may be reduced to 6 years if the orphan drug designation criteria are no longer met, including where it is shown that the product is sufficiently profitable not to justify maintenance of market exclusivity.

Orphan drug designation must be requested before submitting an application for marketing approval. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

Authorization Procedures in the European Union

Medicines can be authorized in the European Union by using either the centralized authorization procedure or national authorization procedures.

- *Centralized procedure*. The EMA implemented the centralized procedure for the approval of human medicines to facilitate marketing authorizations that are valid throughout the European Union. This procedure results in a single marketing authorization issued by the EMA that is valid across the European Union, as well as Iceland, Liechtenstein and Norway. The centralized procedure is compulsory for human medicines that are: derived from biotechnology processes, such as genetic engineering, contain a new active substance indicated for the treatment of certain diseases, such as HIV/AIDS, cancer, diabetes, neurodegenerative disorders or autoimmune diseases and other immune dysfunctions, and officially designated orphan medicines.
- For medicines that do not fall within these categories, an applicant has the option of submitting an application for a centralized marketing authorization to the EMA, as long as the medicine concerned is a significant therapeutic, scientific or technical innovation, or if its authorization would be in the interest of public health.
- *National authorization procedures.* There are also two other possible routes to authorize medicinal products in several countries, which are available for investigational drug products that fall outside the scope of the centralized procedure:
- *Decentralized procedure.* Using the decentralized procedure, an applicant may apply for simultaneous authorization in more than one European Union country of medicinal products that have not yet been authorized in any European Union country and that do not fall within the mandatory scope of the centralized procedure.
- *Mutual recognition procedure.* In the mutual recognition procedure, a medicine is first authorized in one European Union Member State, in accordance with the national procedures of that country. Following this, further marketing authorizations can be sought from other European Union countries in a procedure whereby the countries concerned agree to recognize the validity of the original, national marketing authorization.

Priority Review/Standard Review (U.S.) and Accelerated Review (European Union)

Based on results of the Phase III clinical trial(s) submitted in an NDA, upon the request of an applicant, the FDA may grant the NDA a priority review designation, which sets the target date for FDA action on the application at six months. Priority review is granted where preliminary estimates indicate that a product, if approved, has the potential to provide a safe and effective therapy where no satisfactory alternative therapy exists, or a significant improvement compared to marketed products

is possible. If criteria are not met for priority review, the NDA is subject to the standard FDA review period of 10 months. Priority review designation does not change the scientific/medical standard for approval or the quality of evidence necessary to support approval.

Under the Centralized Procedure in the European Union, the maximum timeframe for the evaluation of a marketing authorization application is 210 days (excluding clock stops, when additional written or oral information is to be provided by the applicant in response to questions asked by the CHMP). Accelerated evaluation might be granted by the CHMP in exceptional cases, when a medicinal product is expected to be of a major public health interest, defined by three cumulative criteria: the seriousness of the disease (e.g., heavy disabling or life-threatening diseases) to be treated; the absence or insufficiency of an appropriate alternative therapeutic approach; and anticipation of high therapeutic benefit. In this circumstance, EMA ensures that the opinion of the CHMP is given within 150 days, excluding clock stops.

There can be no assurance that we or any of our partners would be able to satisfy one or more of these requirements to conduct preclinical or clinical trials or receive any regulatory approvals.

Pharmaceutical Coverage, Pricing and Reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any drug products for which we obtain regulatory approval. In the U.S. and markets in other countries, sales of any products for which we receive regulatory approval for commercial sale will depend in part on the availability of reimbursement from third-party payors. Third-party payors include government health administrative authorities, managed care providers, private health insurers and other organizations. The process for determining whether a payor will provide coverage for a drug product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the drug product. Third-party payors may limit coverage to specific drug products on an approved list, or formulary, which might not include all of the FDA-approved drugs for a particular indication. Third-party payors are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our products, in addition to the costs required to obtain FDA approvals. Our product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development.

In 2003, the U.S. government enacted legislation providing a partial prescription drug benefit for Medicare beneficiaries, which became effective at the beginning of 2006. Government payment for some of the costs of prescription drugs may increase demand for any products for which we receive marketing approval. However, to obtain payments under this program, we would be required to sell products to Medicare recipients through prescription drug plans operating pursuant to this legislation. These plans will likely negotiate discounted prices for our products. Further, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (collectively, the "Healthcare Reform Law"), substantially changed the way healthcare is financed in the U.S. by both government and private insurers. Among other cost containment measures, the Healthcare Reform Law established:

- An annual, nondeductible fee on any entity that manufactures or imports certain branded prescription drugs and biologic agents;
- A new Medicare Part D coverage gap discount program, in which pharmaceutical manufacturers who wish to have their drugs covered under Part D must offer discounts to eligible beneficiaries during their coverage gap period (the "donut hole"); and
- A new formula that increases the rebates a manufacturer must pay under the Medicaid Drug Rebate Program.

We expect that federal, state and local governments in the U.S. will continue to consider legislation to limit the growth of healthcare costs, including the cost of prescription drugs. Future legislation could limit payments for pharmaceuticals such as the drug candidates that we are developing.

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

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

The marketability of any products for which we receive regulatory approval for commercial sale may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement. In addition, an increasing emphasis on managed care in the U.S. has increased and we expect will continue to increase the pressure on pharmaceutical pricing. Coverage policies and third-party reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

Other Healthcare Laws and Compliance Requirements

If we obtain regulatory approval for any of our product candidates, we may be subject to various federal and state laws targeting fraud and abuse in the healthcare industry. For example, in the U.S., there are federal and state anti-kickback laws that prohibit the payment or receipt of kickbacks, bribes or other remuneration intended to induce the purchase or recommendation of healthcare products and services or reward past purchases or recommendations. Violations of these laws can lead to civil and criminal penalties, including fines, imprisonment and exclusion from participation in federal healthcare programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending, or arranging for a good or service, for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. The reach of the Anti-Kickback Statute was broadened by the Healthcare Reform Law, which, among other things, amended the intent requirement of the federal Anti-Kickback Statute and the applicable criminal healthcare fraud statutes contained within 42 U.S.C. § 1320a-7b, effective March 23, 2010. Pursuant to the statutory amendment, a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the government may assert 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 civil False Claims Act (discussed below) or the civil monetary penalties statute. Many states have adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

The federal False Claims Act imposes liability on any person who, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The “qui tam” provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government alleging that the defendant has submitted a false claim to the federal government, and to share in any monetary recovery. In addition, various states have enacted false claims laws analogous to the False Claims Act. Many of these state laws apply where a claim is submitted to any third-party payer and not merely a federal healthcare program. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of $11,463 to $22,927 (each subject to adjustment for inflation) for each separate false claim.

Also, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) created several new federal crimes, including healthcare fraud, and false statements relating to healthcare matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including private third-party payers. The false statements statute prohibits 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 health care benefits, items or services.

In addition, we may be subject to, or our marketing activities may be limited by HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations, which established uniform standards for certain “covered entities” (healthcare providers, health plans and healthcare clearinghouses) and their business associates governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information.

Antibody Clinical Development

We currently focus our research efforts primarily in the identification and isolation of human antibody drug candidates and further characterize these antibody candidates in *in vitro* and *in vivo* functional testing. Due to our limited financial

resources, we intend to actively seek product development and commercialization partners from the biopharmaceutical industry to help us advance the clinical development of select product candidates.

Marketing and Sales

With the exception of our subsidiary, Scilex Holding, we currently do not have any sales capabilities. We intend to license to, or enter into strategic alliances with, larger companies in the biopharmaceutical businesses or use the services of contract sales organizations ("CROs"), which are equipped to, market and/or sell our products, if any, through their well-developed marketing and sales teams and distribution networks. We intend to license some or all of our worldwide patent rights to more than one third party to achieve the fullest development, marketing and distribution of any products we develop.

Manufacturing and Raw Materials

We currently manufacture the majority of our preclinical and clinical materials in-house, and use contract manufacturers for the manufacture of some of our product candidates. We may or may not manufacture the products we develop, if any. As of December 31, 2019, our ZTlido product is manufactured by ITOCHU CHEMICAL FRONTIER Corporation. Our internal manufacturing and contract manufacturers are subject to extensive governmental regulation. Regulatory authorities in our markets require that pharmaceutical products be manufactured, packaged and labeled in conformity with cGMPs. We have established a quality control and quality assurance program, which includes a set of standard operating procedures and specifications designed to ensure that our products are manufactured in accordance with cGMPs, and other applicable domestic and foreign regulations.

Employees

As of December 31, 2019, we had 310 employees and 68 consultants and advisors. A significant number of our management and our other employees and consultants have worked or consulted with pharmaceutical, biotechnology or medical product companies. While we have been successful in attracting skilled and experienced scientific personnel, there can be no assurance that we will be able to attract or retain the necessary qualified employees and/or consultants in the future.

None of our employees are covered by collective bargaining agreements and we consider relations with our employees to be good.

Corporate Information

On September 21, 2009, QuikByte Software, Inc., a Colorado corporation and shell company ("QuikByte"), consummated its acquisition of Sorrento Therapeutics, Inc., a Delaware corporation and private concern ("STI"), in a reverse merger (the "Merger").

We were originally incorporated as San Diego Antibody Company in California in 2006 and were renamed "Sorrento Therapeutics, Inc." and reincorporated in Delaware in 2009, prior to the Merger. QuikByte was originally incorporated in Colorado in 1989. Following the Merger, on December 4, 2009, QuikByte reincorporated under the laws of the State of Delaware (the "Reincorporation"). Immediately following the Reincorporation, on December 4, 2009, we merged with and into QuikByte, the separate corporate existence of STI ceased and QuikByte continued as the surviving corporation (the "Roll-Up Merger"). Pursuant to the certificate of merger filed in connection with the Roll-Up Merger, QuikByte's name was changed from "QuikByte Software, Inc." to "Sorrento Therapeutics, Inc."

Address

Our principal executive offices are located at 4955 Directors Place, San Diego, CA 92121, and our telephone number at that address is (858) 203-4100. Our website is www.sorrentotherapeutics.com. Any information contained on, or that can be accessed through, our website is not incorporated by reference into, nor is it in any way part of this Annual Report on Form 10-K.

Available Information

We file electronically with the U.S. Securities and Exchange Commission (the "SEC") our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and reports filed pursuant to Section 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended. We make available on our website at www.sorrentotherapeutics.com, free of

charge, copies of these reports, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Copies of our annual report to stockholders will also be made available, free of charge, upon written request.

The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at http://www.sec.gov. The contents of these websites are not incorporated into this filing. Further, our references to the URLs for these websites are intended to be inactive textual references only.

Item 1A. Risk Factors.

Risks Related to Our Financial Position and Capital Requirements

We are a clinical stage company subject to significant risks and uncertainties, including the risk that we or our partners may never develop, obtain regulatory approval or market any of our product candidates or generate product related revenues.

We are primarily a clinical stage biotechnology company that began operating and commenced research and development activities in 2009. Pharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. There is no assurance that our libraries of fully-human mAbs or any of our other product candidates in development will be suitable for diagnostic or therapeutic use, or that we will be able to identify and isolate therapeutics product candidates, or develop, market and commercialize these candidates. We do not expect any of our product candidates in development, including, but not limited to, our fully-human mAbs, biosimilars/biobetters, fully human anti-PD-L1 and anti-PD-1 checkpoint inhibitors derived from our proprietary G-MAB™ library platform, antibody drug conjugates (“ADCs”), BsAbs, as well as Chimeric Antigen Receptor-T Cell (“CAR-T”) for adoptive cellular immunotherapy and resiniferatoxin (“RTX") to be commercially available for a few years, if at all. Even if we are able to commercialize our product candidates, there is no assurance that these candidates would generate revenues or that any revenues generated would be sufficient for us to become profitable or thereafter maintain profitability.

We do not have many products that are approved for commercial sale and therefore do not expect to generate any revenues from product sales from most of our product candidates in the foreseeable future, if ever.

We have generated limited product related revenues to date, and, with the exception of ZTlido® (lidocaine topical system 1.8%) (“ZTlido”), do not expect to generate any such revenues for at least the next several years, if at all. To obtain revenues from sales of our product candidates, we must succeed, either alone or with third parties, in developing, obtaining regulatory approval for, manufacturing and marketing products with commercial potential. We may never succeed in these activities, and we may not generate sufficient revenues to continue our business operations or achieve profitability.

We have incurred significant losses since inception and anticipate that we will incur continued losses for the foreseeable future.

As of December 31, 2019, we had an accumulated deficit of $659.8 million. We continue to incur significant research and development and other expenses related to our ongoing operations. We have incurred operating losses since our inception, expect to continue to incur significant operating losses for the foreseeable future, and we expect these losses to increase as we: (i) advance DAR-T, CAR-T, RTX and our other product candidates into clinical trials and pursue other development, acquire, develop and manufacture clinical trial materials and increase other regulatory operating activities, (ii) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (iii) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (iv) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, (v) invest in our joint ventures, collaborations or other third party agreements, (vi) incur expenses in conjunction with defending and enforcing our rights in various litigation matters, (vii) expand our corporate, development and manufacturing infrastructure, and (viii) support our subsidiaries, such as Scilex Holding Company (“Scilex Holding”), in their clinical trial, development and commercialization efforts. As such, we are subject to all risks incidental to the development of new biopharmaceutical products and related companion diagnostics, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders’ equity and working capital.

We will require substantial additional funding, which may not be available to us on acceptable terms, or at all. If we fail to raise the necessary additional capital, we may be unable to complete the development and commercialization of our product candidates or continue our development programs.

Our operations have consumed substantial amounts of cash since inception. We expect to significantly increase our spending to advance the preclinical and clinical development of our product candidates and launch and commercialize any

product candidates for which we receive regulatory approval, including building our own commercial organization to address certain markets. We will require additional capital for the further development and commercialization of our product candidates, as well as to fund our other operating expenses and capital expenditures.

As a result of our recurring losses from operations, recurring negative cash flows from operations and substantial cumulative losses, there is uncertainty regarding our ability to maintain liquidity sufficient to operate our business effectively, which raises substantial doubt about our ability to continue as a going concern. If we are unsuccessful in our efforts to raise outside financing, we may be required to significantly reduce or cease operations. The report of our independent registered public accounting firm on our audited financial statements for the year ended December 31, 2019 included a "going concern" explanatory paragraph indicating that our recurring losses from operations, negative working capital, recurring negative cash flows from operations and substantial cumulative net losses raise substantial doubt about our ability to continue as a going concern.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates. We may also seek collaborators for one or more of our current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. Any of these events could significantly harm our business, financial condition and prospects.

Our future capital requirements will depend on many factors, including:

- the progress of the development of our fully-human mAbs, including biosimilars/biobetters, fully human anti-PD-L1 and anti-PD-1 checkpoint inhibitors derived from our proprietary G-MAB™ library platform, ADCs, BsAbs, as well as CAR-T for adoptive cellular immunotherapy and RTX;
- the number of product candidates we pursue;
- the time and costs involved in obtaining regulatory approvals;
- the costs involved in filing and prosecuting patent applications and enforcing or defending patent claims;
- our plans to establish sales, marketing and/or manufacturing capabilities;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish;
- general market conditions for offerings from biopharmaceutical companies;
- our ability to establish, enforce and maintain selected strategic alliances and activities required for product commercialization;
- our obligations under our debt arrangements; and
- our revenues, if any, from successful development and commercialization of our product candidates, including ZTlido.

In order to carry out our business plan and implement our strategy, we anticipate that we will need to obtain additional financing from time to time and may choose to raise additional funds through strategic collaborations, licensing arrangements, joint ventures, public or private equity or debt financing, bank lines of credit, asset sales, government grants or other arrangements. We cannot be sure that any additional funding, if needed, will be available on terms favorable to us or at all. Furthermore, any additional equity or equity-related financing may be dilutive to our stockholders, and debt or equity financing, if available, may subject us to restrictive covenants and significant interest costs. If we obtain funding through a strategic collaboration or licensing arrangement, we may be required to relinquish our rights to certain of our product candidates or marketing territories.

Further, there is uncertainty related to future National Institutes of Health ("NIH") grant funding, and the NIH's plans for new grants or cooperative agreements may be re-scoped, delayed, or canceled depending on the nature of the work and the availability of resources. As a result, we cannot assure you that we will receive any additional funding under our existing NIH grants, and we may not be successful in securing additional grants from the NIH in the future.

In addition, as discussed in the risk factor under the heading "The terms of our outstanding debt place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business" below, the Loan Agreement contains restrictive covenants and limitations on certain indebtedness, liens, negative pledges, certain restricted payments, subsidiary distributions, investments, fundamental transactions, dispositions of assets and transactions with affiliates, and the Scilex Indenture similarly includes negative covenants that place limitations on the following: the incurrence of debt, the payment of dividends, the repurchase of shares and, under certain conditions, making certain other restricted payments, the prepayment, redemption or repurchase of

subordinated debt, a merger, amalgamation or consolidation involving Scilex Pharma, engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Scilex Indenture.

Our inability to raise capital when needed would harm our business, financial condition and results of operations, and could cause our stock price to decline or require that we wind down our operations altogether.

Risks Related to Our Business and Industry

We are heavily dependent on the success of our technologies and product candidates, and we cannot give any assurance that our product candidates will receive regulatory approval, which is necessary before they can be commercialized.

To date, we have invested a significant portion of our efforts and financial resources in the acquisition and development of our product candidates. As an early stage company, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in new and rapidly evolving fields, particularly in the biopharmaceutical area. Our future success is substantially dependent on our ability to successfully develop, obtain regulatory approval for, and then successfully commercialize such product candidates. Other than ZTlido, our product candidates are currently in preclinical development or in clinical trials. Our business depends entirely on the successful development and commercialization of our product candidates, which may never occur. We currently do not generate significant revenues from sales of any products, and we may not be able to develop or commercialize our product candidates.

The successful development, and any commercialization, of our technologies and any product candidates would require us to successfully perform a variety of functions, including:

- developing our technology platform;
- seeking and obtaining intellectual property and/or proprietary rights to our technology and/or the technology of others;
- identifying, developing, manufacturing and commercializing product candidates;
- entering into successful licensing and other arrangements with product development partners;
- participating in regulatory approval processes;
- formulating and manufacturing products; and
- conducting sales and marketing activities.

Our operations have been limited to organizing our company, acquiring, developing and securing our proprietary technology and identifying and obtaining early preclinical data or clinical data for various product candidates. These operations provide a limited basis for you to assess our ability to continue to develop our technology, identify product candidates, develop and commercialize any product candidates we can identify and enter into successful collaborative arrangements with other companies, as well as for you to assess the advisability of investing in our securities. Each of these requirements will require substantial time, effort and financial resources.

Each of our product candidates will require additional preclinical or clinical development, management of preclinical, clinical and manufacturing activities, regulatory approval in multiple jurisdictions, obtaining manufacturing supply, building of a commercial organization, and significant marketing efforts before we generate any revenues from product sales. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the U.S. Food and Drug Administration (the "FDA"), the United Kingdom's Medicines and Healthcare Products Regulatory Agency (the "MHRA"), the European Medicines Agency (the "EMA") or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. In addition, our product development programs contemplate the development of companion diagnostics by our third-party collaborators. Companion diagnostics are subject to regulation as medical devices and must themselves be approved for marketing by the FDA, the MHRA, the EMA or certain other foreign regulatory agencies before we may commercialize our product candidates.

Delays in clinical testing could result in increased costs to us and delay our ability to generate revenue.

Although we are planning for certain clinical trials relating to RTX, CAR-T and biosimilar/biobetter antibodies and other product candidates, there can be no assurance that the FDA will accept our proposed trial designs. We may experience delays in our clinical trials, and we do not know whether planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays related to:

- obtaining regulatory approval to commence a trial;
- reaching agreement on acceptable terms with prospective contract research organizations ("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;
- obtaining institutional review board ("IRB") approval at each site;
- recruiting suitable patients to participate in a trial;
- clinical sites deviating from trial protocol or dropping out of a trial;
- having patients complete a trial or return for post-treatment follow-up;
- developing and validating companion diagnostics on a timely basis, if required;
- adding new clinical trial sites; or
- manufacturing sufficient quantities of product candidate for use in clinical trials.

Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors, including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, competing clinical trials and clinicians' and patients' perceptions as to the potential advantages of the product candidate being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating. Furthermore, we intend to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and we intend to have agreements governing their committed activities, but we will have limited influence over their actual performance.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs of the institutions in which such trials are being conducted, by the Data Monitoring Committees (also known as Data and Safety Monitoring Board or Data and Safety Monitoring Committee) for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

If we experience delays in the completion of, or termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate 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. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

Competition for patients in conducting clinical trials may prevent or delay product development and strain our limited financial resources.

Many pharmaceutical companies are conducting clinical trials in patients with the disease indications that our potential drug products target. As a result, we must compete with them for clinical sites, physicians and the limited number of patients who fulfill the stringent requirements for participation in clinical trials. Also, due to the confidential nature of clinical trials, we do not know how many of the eligible patients may be enrolled in competing studies and who are consequently not available to us for our clinical trials. Our clinical trials may be delayed or terminated due to the inability to enroll enough patients. Patient enrollment depends on many factors, including the size of the patient population, the nature of the trial protocol, the proximity of patients to clinical sites and the eligibility criteria for the study. The delay or inability to meet planned patient enrollment may result in increased costs and delays or termination of the trial, which could have a harmful effect on our ability to develop products.

The regulatory approval processes of the FDA, the MHRA, the EMA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval from the FDA, the MHRA, the EMA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. Other than ZTlido, we have not obtained regulatory approval for any product candidate and it is possible that none of our existing product candidates or any product candidates we may seek to develop in the future will ever obtain regulatory approval.

We may fail to receive regulatory approval for our product candidates for many reasons, including the following:

- the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials;
- we may be unable to demonstrate to the satisfaction of the FDA, the MHRA, the EMA or comparable foreign regulatory authorities that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required for approval by the FDA, the MHRA, the EMA or comparable foreign regulatory authorities;
- the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may disagree with our interpretation of data from preclinical studies or clinical trials;

- the data collected from clinical trials of our product candidates may not be sufficient to support the submission of a new drug application ("NDA"), a marketing authorization application ("MAA") or other submission or to obtain regulatory approval in the U.S., the United Kingdom, the European Union or elsewhere;
- the data obtained from studies in one jurisdiction, such as the United States, may not be accepted by regulatory authorities in other jurisdictions, and certain jurisdictions may require data from studies conducted in their country in order to obtain regulatory approval;
- the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may fail to approve the manufacturing processes or facilities of third-party manufacturers with which we contract for clinical and commercial supplies;
- the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may fail to approve the companion diagnostics we contemplate developing with partners; and
- the approval policies or regulations of the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient for approval.

This lengthy approval process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval to market our product candidates, which would significantly harm our business, results of operations and prospects.

In addition, even if we were to obtain approval, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

Other than an NDA submitted by Scilex Pharmaceuticals Inc. ("Scilex Pharma") for Scilex Pharma's lead product candidate, ZTlido, which was approved by the FDA in February 2018, and an MAA filed in Europe (which was subsequently withdrawn in 2019), we have not previously submitted a BLA or an NDA to the FDA, an MAA to the MHRA or the EMA or similar drug approval filings to comparable foreign authorities, for any product candidate, and we cannot be certain that any of our product candidates will be successful in clinical trials or receive regulatory approval. Further, our product candidates may not receive regulatory approval even if our clinical trials are successful. If we do not receive regulatory approvals for our product candidates, we may not be able to continue our operations. Even if we successfully obtain regulatory approvals to market one or more of our product candidates, our revenues will be dependent, in some instances, upon our collaborators' ability to obtain regulatory approval of the companion diagnostics to be used with our product candidates, as well as the size of the markets in the territories for which we gain regulatory approval and have commercial rights. If the markets for patients that we are targeting for our product candidates are not as significant as we estimate, we may not generate significant revenues from sales of such products, if approved.

We plan to seek regulatory approval to commercialize our product candidates in the U.S., the United Kingdom, the European Union and in additional foreign countries. While the scope of regulatory approval is similar in other countries, to obtain separate regulatory approval in many other countries we must comply with numerous and varying regulatory requirements of such countries regarding safety and efficacy and governing, among other things, clinical trials and commercial sales, pricing and distribution of our product candidates, and we cannot predict success in these jurisdictions. In addition, our failure to obtain regulatory approval in any country may delay or have negative effects on the process for regulatory approval in other countries. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, our target market will be reduced and our ability to realize the full market potential of our products or product candidates will be harmed. Further, the United Kingdom has withdrawn from the European Union. We cannot predict what consequences the withdrawal of the United Kingdom from the European Union might have on the regulatory frameworks of the United Kingdom or the European Union, or on our future operations, if any, in these jurisdictions.

Our approach to the discovery and development of product candidates that target ADCs or iTAbs is unproven, and we do not know whether we will be able to develop any products of commercial value.

ADCs and intracellular targeting antibodies ("iTAbs") are emerging technologies and, consequently, it is conceivable that such technologies may ultimately fail to identify commercially viable products to treat human patients with cancer or other diseases. Due to the unproven nature of ADCs and iTAbs, significant further research and development activities will be required. We may incur substantial costs in connection with such research and development activities and there is no guarantee that these activities will lead to the identification of commercially viable products.

Our product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following marketing approval, if any.

Undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. Results of our trials could reveal a high and unacceptable severity and prevalence of these or other side effects. In such an event, our trials could be suspended or terminated, and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of our product candidates for any or all targeted indications. The drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in potential product liability claims. Any of these occurrences may harm our business, financial condition and prospects significantly.

Additionally, if we receive marketing approval for one or more of our product candidates, and we or others later identify undesirable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of such products;
- regulatory authorities may require additional warnings on the label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate or for particular indications of a product candidate, if approved, and could significantly harm our business, results of operations and prospects.

We rely on third parties to conduct our preclinical and clinical trials. If these third parties do not successfully perform their contractual legal and regulatory duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our product candidates and our business could be substantially harmed.

We have relied upon and plan to continue to rely upon third-party CROs to monitor and manage data for our ongoing preclinical and clinical programs. We rely on these parties for execution of our preclinical and clinical trials, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards, and our reliance on the CROs does not relieve us of our regulatory responsibilities. We and our CROs are required to comply with current good clinical practices (“cGCP”), which are regulations and guidelines enforced by the FDA, the Competent Authorities of the Member States of the European Economic Area, and comparable foreign regulatory authorities for all of our product candidates in clinical development.

Regulatory authorities enforce these cGCPs through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable cGCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, the MHRA, the EMA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications or may not approve our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with cGCP regulations. In addition, our clinical trials must be conducted with product produced under current good manufacturing practices (“cGMP”) regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If any of our relationships with these third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so on commercially reasonable terms. In addition, our CROs 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 on-going clinical, nonclinical and preclinical programs. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to 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 product candidates. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

Switching or adding additional CROs involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO commences work. As a result, delays occur, which can materially impact our ability to meet our desired clinical development timelines. Though we carefully manage our relationships with our CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.

If we fail to comply with manufacturing regulations, our financial results and financial condition will be adversely affected.

We currently manufacture some of our preclinical and clinical materials in-house. In addition, we may enter into collaboration and license agreements with certain collaborators, pursuant to which we may, among other things, agree to carry out manufacturing of our collaborators' material and product candidates. However, we only recently began manufacturing such materials and do not have significant prior experience manufacturing preclinical or clinical materials or product candidates. Before we can begin commercial manufacture of our or any potential collaborators' materials or product candidates, regulatory authorities must approve marketing applications that identify manufacturing facilities operated by us or our contract manufacturers that have passed regulatory inspection and manufacturing processes that are acceptable to the regulatory authorities. In addition, our pharmaceutical manufacturing facilities are continuously subject to scheduled and unannounced inspection by the FDA and international regulatory authorities, before and after product approval, to monitor and ensure compliance with cGMP and other regulations. Additionally, we may use contract manufacturers for the manufacture of our product candidates from time to time based on capacity needs. Although we are not involved in the day-to-day operations of our contract manufacturers, we are ultimately responsible for ensuring that our products are manufactured in accordance with cGMP regulations.

Due to the complexity of the processes used to manufacture our product candidates and our potential collaborators' product candidates, we may be unable to continue to pass or initially pass federal or international regulatory inspections in a cost-effective manner. For the same reason, any potential third-party manufacturer of our product candidates may be unable to comply with cGMP regulations in a cost-effective manner and may be unable to initially or continue to pass a federal or international regulatory inspection.

If we, or third-party manufacturers with whom we contract, are unable to comply with manufacturing regulations, we may be subject to delay of approval of our product candidates, warning or untitled letters, fines, unanticipated compliance expenses, recall or seizure of our products, total or partial suspension of production and/or enforcement actions, including injunctions, and criminal or civil prosecution. These possible sanctions would adversely affect our financial results and financial condition.

With specific regard to ZTlido and other drug products we do not manufacture in-house, but rather through a third-party manufacturer, if a third-party manufacturer upon which we rely fails to produce drug candidates that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the trials, regulatory submissions, required approvals or commercialization of our drug candidates. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, which include difficulties with production costs and yields, quality control and assurance and shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. The third-party manufacturers we contract with may not perform as agreed or may terminate their agreements with us. Any of these factors could cause us to delay or suspend any future clinical trials, regulatory submissions, required approvals or commercialization of one or more of our drug candidates, entail higher costs and result in our being unable to effectively commercialize products.

Material necessary to manufacture product candidates may not be available on commercially reasonable terms, or at all, which may delay the development and commercialization of product candidates.

There are a limited number of suppliers for raw materials that we use to manufacture our products and product candidates and there may be a need to assess alternate suppliers to prevent a possible disruption of the manufacture of the materials necessary to produce our product candidates for clinical trials, and if approved, ultimately for commercial sale. We do not have any control over the process or timing of the acquisition of these raw materials by us. We typically do not have any agreements for the commercial production of these raw materials. Any significant delay in the supply of a product candidate, or the raw material components thereof, for an ongoing clinical trial due to the need to obtain or replace a third-party manufacturer could considerably delay completion of our clinical trials, product testing and potential regulatory approval of our product candidates. If we are unable to purchase these raw materials after regulatory approval has been obtained for our product

candidates, the commercial launch of our product candidates would be delayed or there would be a shortage in supply, which would impair our ability to generate revenues from the sale of our product candidates.

We may not be able to manufacture our products or product candidates in commercial quantities, which would prevent us from commercializing our products and product candidates.

We are largely dependent on our third-party manufacturers to conduct process development and scale-up work necessary to support greater clinical development and commercialization requirements for our products and product candidates. Carrying out these activities in a timely manner, and on commercially reasonable terms, is critical to the successful development and commercialization of our products and product candidates. We expect our third-party manufacturers are capable of providing sufficient quantities of our products and product candidates to meet anticipated clinical and full-scale commercial demands, however if third parties with whom we currently work are unable to meet our supply requirements, we will need to secure alternate suppliers or face potential delays or shortages. While we believe that there are other contract manufacturers with the technical capabilities to manufacture our products and product candidates, we cannot be certain that identifying and establishing relationships with such sources would not result in significant delay or material additional costs.

The complexities and regulations related to our manufacturing and development services businesses subject us to potential risks.

Through certain subsidiaries, we offer development (*e.g.*, conjugation) and manufacturing services that are highly complex, due in part to strict regulatory requirements. A failure of our quality control systems in our facilities could cause problems to arise in connection with facility operations for a variety of reasons, including equipment malfunction, contamination, failure to follow specific manufacturing instructions, protocols and standard operating procedures, problems with raw materials or environmental factors. Such problems could affect production of a single manufacturing run or a series of runs, requiring the destruction of products, or could halt manufacturing operations altogether. In addition, our failure to meet required quality standards may result in our failure to timely deliver products to our customers or collaborators, which in turn could damage our reputation for quality and service. Any such incident could, among other things, lead to increased costs, lost revenue, reimbursement to customers for lost drug substance, damage to and possibly termination of existing customer relationships, time and expense spent investigating the cause and, depending on the cause, similar losses with respect to other manufacturing runs. With respect to our commercial manufacturing, if problems are not discovered before the product is released to the market, we may be subject to regulatory actions, including product recalls, product seizures, injunctions to halt manufacture and distribution, restrictions on our operations, civil sanctions, including monetary sanctions, and criminal actions. In addition, such issues could subject us to litigation and/or liability for damages, the cost of which could be significant.

Regulatory agencies may periodically inspect our manufacturing facilities to ensure compliance with applicable legal, regulatory and local requirements, such as cGMP requirements. Failure to comply with these requirements may subject us to possible legal or regulatory actions, such as suspension of manufacturing, seizure of product or voluntary recall of a product.

Failure to comply with existing and future regulatory requirements as a contract manufacturing organization could adversely affect our business, results of operations and financial condition.

Operations as a contract manufacturing organization ("CMO") are highly regulated. As a CMO, we are required to comply with the regulatory requirements of various local, state, provincial, national and international regulatory bodies having jurisdiction in the countries or localities in which we may manufacture products or product candidates or in which our collaborators' products or product candidates are distributed. In particular, we are subject to laws and regulations concerning development, testing, manufacturing processes, equipment and facilities, including compliance with cGMPs, import and export regulations, and product registration and listing, among other things. As a result, our facilities are subject to regulation by the FDA, as well as regulatory bodies of other jurisdictions such as the EMA, depending on the countries in which our collaborators develop the products or product candidates we manufacture on their behalf. As we expand our operations and geographic scope, we may be exposed to more complex and new regulatory and administrative requirements and legal risks, any of which may require expertise in which we have little or no experience. It is possible that compliance with new regulatory requirements could impose significant compliance costs on us. Such costs could have a material adverse effect on our business, financial condition and results of operations.

These regulatory requirements impact many aspects of our operations, including manufacturing, developing, storage, distribution, import and export and record keeping related to collaborators' products or product candidates. Noncompliance with any applicable regulatory requirements can result in government refusal to approve (i) facilities for testing or manufacturing product candidates or (ii) potential products for commercialization. The FDA and other regulatory agencies can delay, limit or deny approval for many reasons, including:

- changes to the regulatory approval process, including new data requirements for products or product candidates in those jurisdictions, including the United States, in which our customers may be seeking approval;
- that a collaborator's product or product candidate may not be deemed to be safe or effective;
- the ability of the regulatory agency to provide timely responses as a result of its resource constraints; and
- that the manufacturing processes or facilities may not meet the applicable requirements.

In addition, if new legislation or regulations are enacted or existing legislation or regulations are amended or are interpreted or enforced differently, we may be required to obtain additional approvals or operate according to different manufacturing or operating standards. This may require a change in our development and manufacturing techniques or additional capital investments in our facilities. Any related costs may be significant. If we fail to comply with applicable regulatory requirements in the future, then we may be subject to warning letters and/or civil or criminal penalties and fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, restrictions on the import and export of products, debarment, exclusion, disgorgement of profits, operating restrictions and criminal prosecution and the loss of contracts and resulting revenue losses. Inspections by regulatory authorities that identify any deficiencies could result in remedial actions, production stoppages or facility closure, which would disrupt the manufacturing process and supply of product to our collaborators. In addition, such failure to comply could expose us to contractual and product liability claims, including claims by collaborators for reimbursement for lost or damaged active pharmaceutical ingredients or recall or other corrective actions, the costs of which could be significant.

In addition, certain product candidates we manufacture must undergo pre-clinical and clinical evaluations relating to product safety and efficacy before they are approved as commercial therapeutic products. The regulatory authorities having jurisdiction in the countries in which we or our collaborators intend to market their products may delay or put on hold clinical trials or delay approval of a product or determine that the product is not approvable. The FDA or other regulatory agencies can delay approval of a product candidate if our manufacturing facility, including any newly commissioned facility, is not able to demonstrate compliance with cGMPs, pass other aspects of pre-approval inspections or properly scale up to produce commercial supplies. The FDA and comparable government authorities having jurisdiction in the countries in which we or our collaborators may market approved products have the authority to withdraw product approval or suspend manufacture if there are significant problems with raw materials or supplies, quality control and assurance or the product we manufacture is adulterated or misbranded. If our manufacturing facilities and services are not in compliance with FDA and comparable government authorities, we may be unable to obtain or maintain the necessary approvals to continue manufacturing product candidates for our customers, which would materially adversely affect our results of operations and financial condition.

The consumers of any approved products we manufacture for our collaborators may significantly influence our business, results of operations and financial condition.

We will depend on, and have no control over, consumer demand for any approved products we manufacture for our collaborators. Consumer demand for our collaborators' products could be adversely affected by, among other things, delays in health regulatory approval, the inability of our collaborators to demonstrate the efficacy and safety of their products, the loss of patent and other intellectual property rights protection, the emergence of competing or alternative products, including generic drugs, the degree to which private and government payment subsidies for a particular product offset the cost to consumers and changes in the marketing strategies for such products. If the products we manufacture for our collaborators do not gain market acceptance, our revenues and profitability may be adversely affected.

Continued changes to the healthcare industry, including ongoing healthcare reform, adverse changes in government or private funding of healthcare products and services, legislation or regulations governing the privacy of patient information or patient access to care, or the delivery, pricing or reimbursement of pharmaceuticals and healthcare services or mandated benefits, may cause healthcare industry participants to purchase fewer services from us or influence the price that others are willing to pay for our services. Changes in the healthcare industry's pricing, selling, inventory, distribution or supply policies or practices could also significantly reduce our revenue and profitability.

If production volumes of key products that we manufacture for our collaborators decline, results of operations and financial condition may continue to be adversely affected.

If we do not successfully commercialize our products, our business, financial condition and results of operations will be materially and adversely affected.

With the exception of Scilex Holding (which commercially launched, through Scilex Pharma, ZTlido in late October 2018, using a contract sales organization to conduct its primary sales activities), we currently have no sales and marketing

organization. If any of our product candidates are approved by the FDA, we intend to market that product through our own sales force. We will incur significant additional expenses and commit significant additional management resources to establish our sales force. We may not be able to establish these capabilities despite these additional expenditures. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire and train sales and marketing personnel. If we elect to rely on third parties to sell our product candidates in the U.S., we may receive less revenue than if we sold our products directly. In addition, although we would intend to use due diligence in monitoring their activities, we may have little or no control over the sales efforts of those third parties. In the event we are unable to develop our own sales force or collaborate with a third party to sell our product candidates, we may not be able to commercialize our product candidates which would negatively impact our ability to generate revenue.

Specifically relating to Scilex Holding, Scilex Holding has a limited internal commercial infrastructure (with most of the sales organization provided by a third party, contract sales organization) and since ZTlido only launched in late October 2018, Scilex Holding has limited experience in the commercialization, sale, marketing or distribution of pharmaceutical products, like ZTlido. Scilex Holding's commercialization efforts of ZTlido have been primarily focused in the United States. Commercialization of ZTlido and other future product candidates outside of the United States, to the extent pursued, is likely to require collaboration with one or more third parties.

In late October 2018, Scilex Holding (through Scilex Pharma) began commercial sales of ZTlido. In addition to the risks discussed elsewhere in this section, Scilex Holding's ability to successfully commercialize and generate revenues from ZTlido depends on a number of factors, including, but not limited to, Scilex Holding's ability to:

- develop and execute our sales and marketing strategies for Scilex Holding's products;
- achieve, maintain and grow market acceptance of, and demand for, Scilex Holding's products;
- obtain and maintain adequate coverage, reimbursement and pricing from managed care, government and other third-party payers;
- maintain, manage or scale the necessary sales, marketing, manufacturing, managed markets, and other capabilities and infrastructure that are required to successfully integrate and commercialize our products;
- obtain adequate supply of Scilex Holding's products;
- maintain and extend intellectual property protection for Scilex Holding's products; and
- comply with applicable legal and regulatory requirements.

If Scilex Holding is unable to successfully achieve or perform these functions, Scilex Holding will not be able to maintain or increase its product revenues and our business, financial condition and results of operations will be materially and adversely affected.

We may need others to market and commercialize our product candidates in international markets.

In the future, if appropriate regulatory approvals are obtained, we may commercialize our product candidates in international markets. However, we have not decided how to commercialize our product candidates in those markets. We may decide to build our own sales force or sell our products through third parties. If we decide to sell our product candidates in international markets through a third party, we may not be able to enter into any marketing arrangements on favorable terms or at all. In addition, these arrangements could result in lower levels of income to us than if we marketed our product candidates entirely on our own. If we are unable to enter into a marketing arrangement for our product candidates in international markets, we may not be able to develop an effective international sales force to successfully commercialize those products in international markets. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenue would be limited.

With respect to ZTlido and any of our product candidates for which we may receive regulatory approvals, we will be subject to ongoing obligations and continued regulatory review, which may result in significant additional expense. Additionally, our product candidates, if approved, could be subject to labeling and other restrictions and market withdrawal and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products.

Our FDA approval for ZTlido and any other regulatory approvals that we may receive for our product candidates may be subject to limitations on the approved indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase IV clinical trials, and surveillance to monitor the safety and efficacy of the product candidate. In addition, if the FDA or a comparable foreign regulatory authority approves any of our product candidates, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMPs and cGCPs for any clinical trials that we conduct post-approval. The future discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with our

third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

The FDA's policies may change, and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained, which would adversely affect our business, prospects and ability to achieve or sustain profitability.

We will need to obtain FDA approval of any proposed product brand names, and any failure or delay associated with such approval may adversely impact our business.

A pharmaceutical product cannot be marketed in the U.S. or other countries until we have completed rigorous and extensive regulatory review processes, including approval of a brand name. Any brand names we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office (the "PTO"). The FDA typically conducts a review of proposed product brand names, including an evaluation of potential for confusion with other product names. The FDA may also object to a product brand name if it believes the name inappropriately implies medical claims. If the FDA objects to any of our proposed product brand names, we may be required to adopt an alternative brand name for our product candidates. If we adopt an alternative brand name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product brand name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

Our failure to successfully discover, acquire, develop and market additional product candidates or approved products would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional products and product candidates. We are pursuing various therapeutic opportunities through our product pipeline. We may spend several years completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical and biotechnology companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products. Failure of this strategy would impair our ability to grow.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;

- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership;
- impairment of our ability to obtain intellectual property rights or rights to commercialize additional product candidates, or increased cost to obtain such rights;
- inability to motivate key employees of any acquired businesses; and
- assumption of known and unknown liabilities.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Our commercial success depends upon us attaining significant market acceptance of our product candidates, if approved for sale, among physicians, patients, healthcare payors and major operators of cancer and other clinics.

Even if we obtain regulatory approval for our product candidates, the product may not gain market acceptance among physicians, health care payors, patients and the medical community, which are critical to commercial success. Market acceptance of any product candidate for which we receive approval depends on a number of factors, including:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of such product candidate as well as competitive products;
- the clinical indications for which the product candidate is approved;
- acceptance by physicians, major operators of cancer clinics and patients of the product candidate as a safe and effective treatment;
- the safety of such product candidate seen in a broader patient group, including its use outside the approved indications;
- the availability, cost and potential advantages of alternative treatments, including less expensive generic drugs;
- the availability of adequate reimbursement and pricing by third-party payors and government authorities;
- the product labeling or product insert required by the FDA or regulatory authority in other countries;
- the approval, availability, market acceptance and reimbursement for a companion diagnostic, if any;
- the prevalence and severity of adverse side effects; and
- the effectiveness of our sales and marketing efforts.

If any product candidate that we develop does not provide a treatment regimen that is as beneficial as, or is perceived as being as beneficial as, the current standard of care or otherwise does not provide patient benefit, that product candidate, if approved for commercial sale by the FDA or other regulatory authorities, likely will not achieve market acceptance. Our ability to effectively promote and sell any approved products will also depend on pricing and cost-effectiveness, including our ability to produce a product at a competitive price and our ability to obtain sufficient third-party coverage or reimbursement. If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, patients and third-party payors, our ability to generate revenues from that product would be substantially reduced. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources, may be constrained by FDA rules and policies on product promotion, and may never be successful.

If we cannot compete successfully against other biotechnology and pharmaceutical companies, we may not be successful in developing and commercializing our technology and our business will suffer.

The biotechnology and pharmaceutical industries are characterized by intense competition and rapid technological advances, both in the U.S. and internationally. In addition, the competition in the oncology and pain management markets, and other relevant markets, is intense. Even if we are able to develop our product candidates, proprietary platform technology and/or additional antibody libraries, each will compete with a number of existing and future technologies and product candidates developed, manufactured and marketed by others. Specifically, we will compete against fully integrated pharmaceutical companies and smaller companies that are collaborating with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors have validated technologies with products already FDA-approved or in various stages of development. In addition, many of these competitors, either alone or together with their collaborative partners, operate larger research and development programs and have substantially greater financial resources than we do, as well as significantly greater experience in:

- developing product candidates and technologies generally;
- undertaking preclinical testing and clinical trials;

- obtaining FDA and other regulatory approvals of product candidates;
- formulating and manufacturing product candidates; and
- launching, marketing and selling product candidates.

Many of our competitors have substantially greater financial, technical and other resources, such as larger research and development staff and experienced marketing and manufacturing organizations. Additional mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors. As a result, these companies may obtain regulatory approval more rapidly than we are able and may be more effective in selling and marketing their products as well. Smaller or early-stage companies or generic or biosimilar pharmaceutical manufacturers may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Competition may increase further as a result of advances in the commercial applicability of technologies and greater availability of capital for investment in these industries. Our competitors may succeed in developing, acquiring or licensing on an exclusive basis drug products that are more effective or less costly than any drug candidate that we are currently developing or that we may develop. If approved, our product candidates will face competition from commercially available drugs as well as drugs that are in the development pipelines of our competitors and later enter the market.

Established pharmaceutical companies may invest heavily to accelerate discovery and development of novel compounds or to in-license novel compounds that could make our product candidates less competitive. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to overcome price competition and to be commercially successful. Accordingly, our competitors may succeed in obtaining patent protection, receiving FDA, MHRA, EMA or other regulatory approval or discovering, developing and commercializing medicines before we do, which would have a material adverse impact on our business. If our technologies fail to compete effectively against third party technologies, our business will be adversely impacted.

We expect that our ability to compete effectively will depend upon our ability to:
- successfully and efficiently complete clinical trials and submit for and obtain all requisite regulatory approvals in a cost-effective manner;
- obtain and maintain a proprietary position for our products and manufacturing processes and other related product technology;
- attract and retain key personnel;
- develop relationships with physicians prescribing these products; and
- build an adequate sales and marketing infrastructure for our product candidates.

Because we will be competing against significantly larger companies with established track records, we will have to demonstrate that, based on experience, clinical data, side-effect profiles and other factors, our product candidates, if approved, are competitive with other products.

Reimbursement may be limited or unavailable in certain market segments for our product candidates, which could make it difficult for us to sell our products profitably.

There is significant uncertainty related to the third-party coverage and reimbursement of newly approved drugs. We intend to seek approval to market our product candidates in the U.S., Europe and other selected foreign jurisdictions. Market acceptance and sales of our product candidates in both domestic and international markets will depend significantly on the availability of adequate coverage and reimbursement from third-party payors for any of our product candidates and may be affected by existing and future health care reform measures. Government and other third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement for new drugs and, as a result, they may not cover or provide adequate payment for our product candidates. These payors may conclude that our product candidates are less safe, less effective or less cost-effective than existing or future introduced products, and third-party payors may not approve our product candidates for coverage and reimbursement or may cease providing coverage and reimbursement for these product candidates.

Obtaining coverage and reimbursement approval for a product from a government or other third-party payor is a time consuming and costly process that could require us to provide to the payor supporting scientific, clinical and cost-effectiveness data for the use of our products. We may not be able to provide data sufficient to gain acceptance with respect to coverage and reimbursement. If reimbursement of our future products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

In some foreign countries, particularly in the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the

receipt of marketing approval for a product candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct additional clinical trials that compare the cost-effectiveness of our product candidates to other available therapies. If reimbursement of our product candidates is unavailable or limited in scope or amount in a particular country, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability of our products in such country.

Price controls may be imposed, which may adversely affect our future profitability.

In some countries, including member states of the European Union (the "EU"), the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take a significant amount of time after receipt of marketing approval for a product. In addition, there can be considerable pressure by governments and other stakeholders on prices and reimbursement levels, including as part of cost containment measures. Political, economic and regulatory developments may further complicate pricing negotiations, and pricing negotiations may continue after reimbursement has been obtained. Reference pricing used by various EU member states and parallel distribution, or arbitrage between low-priced and high-priced member states, can further reduce prices, and in certain instances render commercialization in certain markets infeasible or disadvantageous from a financial perspective. In some countries, we or our collaborators may be required to conduct a clinical trial or other studies that compare the cost-effectiveness of our product and/or our product candidates to other available products in order to obtain or maintain reimbursement or pricing approval. Publication of discounts by third party payors or government authorities may lead to further pressure on the prices or reimbursement levels. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, the commercial launch of our product and/or product candidates could be delayed, possibly for lengthy periods of time, we or our collaborators may not launch at all in a particular country, we may not be able to recoup our investment in one or more product candidates, and there could be a material adverse effect on our business.

Recently, there has been considerable public and government scrutiny in the United States of pharmaceutical pricing and proposals to address the perceived high cost of pharmaceuticals. There have also been several recent state legislative efforts to address drug costs, which generally have focused on increasing transparency around drug costs or limiting drug prices or price increases. Adoption of new legislation at the federal or state level could affect demand for, or pricing of, our product candidates, if approved, and could diminish our ability to establish what we believe is a fair price for our products, ultimately diminishing our revenue for our products if they are approved.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

In both the U.S. and certain foreign jurisdictions, there have been, and we expect there will continue to be a number of legislative and regulatory changes to the health care system that could impact our ability to sell our products profitably. The U.S. government and other governments have shown significant interest in pursuing healthcare reform. In particular, the Medicare Modernization Act of 2003 revised the payment methodology for many products under the Medicare program in the U.S. This has resulted in lower rates of reimbursement. In 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (collectively, the "Healthcare Reform Law"), was enacted. The Healthcare Reform Law substantially changed the way healthcare is financed by both governmental and private insurers. Such government-adopted reform measures may adversely impact the pricing of healthcare products and services in the U.S. or internationally and the amount of reimbursement available from governmental agencies or other third-party payors.

There have been, and likely will continue to be, legislative and regulatory proposals at the federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. For example, there have been recent public announcements by members of the U.S. Congress, President Trump and his administration regarding their plans to repeal and replace the Healthcare Reform Law and Medicare. Although we cannot predict the ultimate content or timing of any healthcare reform legislation, potential changes resulting from any amendment, repeal or replacement of these programs, including any reduction in the future availability of healthcare insurance benefits, could adversely affect our business and future results of operations. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect the demand for any product candidates for which we may obtain regulatory approval, as well as our ability to set satisfactory prices for our products, to generate revenues, and to achieve and maintain profitability.

Failure to successfully validate, develop and obtain regulatory approval for companion diagnostics could harm our long-term drug development strategy.

As one of the key elements of our clinical development strategy, we seek to identify patients within a disease category or indication who may derive selective and meaningful benefit from the product candidates we are developing. In collaboration with partners, we plan to develop companion diagnostics to help us to more accurately identify patients within a particular

category or indication, both during our clinical trials and in connection with the commercialization of certain of our product candidates.

Companion diagnostics are subject to regulation by the FDA and comparable foreign regulatory authorities as medical devices and require separate regulatory approval prior to commercialization. We typically do not develop companion diagnostics internally and thus we are dependent on the sustained cooperation and effort of our third-party collaborators in developing and obtaining approval for these companion diagnostics. We and our collaborators may encounter difficulties in developing and obtaining approval for the companion diagnostics, including issues relating to selectivity/specificity, analytical validation, reproducibility or clinical validation. Any delay or failure by our collaborators to develop or obtain regulatory approval of the companion diagnostics could delay or prevent approval of our product candidates. In addition, our collaborators may encounter production difficulties that could constrain the supply of the companion diagnostics, and both they and we may have difficulties gaining acceptance of the use of the companion diagnostics in the clinical community. If such companion diagnostics fail to gain market acceptance, it would have an adverse effect on our ability to derive revenues from sales of our products. In addition, any diagnostic company with whom we contract may decide to discontinue selling or manufacturing the companion diagnostic that we anticipate using in connection with development and commercialization of our product candidates or our relationship with such diagnostic company may otherwise terminate. In such instances, we may not be able to enter into arrangements with another diagnostic company to obtain supplies of an alternative diagnostic test for use in connection with the development and commercialization of our product candidates or do so on commercially reasonable terms, which could adversely affect and/or delay the development or commercialization of our product candidates.

Our collaborations depend upon the efforts of third parties to fund and manage the development of many of our potential product candidates, and failure of those third-party collaborators to assist or share in the costs of product development could materially harm our business, financial condition and results of operations.

Our strategy for the development and commercialization of our proprietary product candidates has included the formation of joint ventures and collaborative arrangements with third parties. Potential third parties include biopharmaceutical, pharmaceutical and biotechnology companies, academic institutions and other entities. Third-party collaborators may assist us in:

- funding research, preclinical development, clinical trials and manufacturing;
- seeking and obtaining regulatory approvals;
- seeking and obtaining intellectual property and/or other proprietary rights to technology; and
- successfully commercializing any future product candidates.

Our collaborations limit our ability to control the efforts devoted to many of our product candidates in such arrangements and our earlier stage pipeline is dependent upon identifying new potential collaborators. For example, our most recent joint ventures require us to conduct research and provide potential product candidates in addition to making capital contributions to continue the further development of those products. We generally do not have control over the management of the joint ventures and are minority holders in most of those ventures, which may result in limitations on our ability to successfully develop product candidates, obtain intellectual property and/or other proprietary rights and fund clinical trials through those joint ventures.

In addition, if we are not able to establish further collaboration agreements, we may be required to undertake product development and commercialization at our own expense. Such an undertaking may limit the number of product candidates that we will be able to develop, significantly increase our capital requirements and place additional strain on our internal resources.

Our failure to enter into additional collaborations could materially harm our business, financial condition and results of operations.

In addition, our dependence on licensing, collaboration and other agreements with third parties may subject us to a number of risks. These agreements may not be on terms that prove favorable to us and may require us to relinquish certain rights in our product candidates. To the extent we agree to work exclusively with one collaborator in a given area, our opportunities to collaborate with other entities could be curtailed. Lengthy negotiations with potential new collaborators may lead to delays in the research, development or commercialization of product candidates. The decision by our collaborators to pursue alternative technologies or the failure of our collaborators to develop or commercialize successfully any product candidate to which they have obtained rights from us could materially harm our business, financial condition and results of operations.

We may seek to establish collaborations and, if we are not able to establish them on commercially reasonable terms, we may have to alter our development and commercialization plans.

From time to time we may engage in efforts to enter into licensing, distribution and/or collaboration agreements with one or more pharmaceutical or biotechnology companies to assist us with development and/or commercialization of our other product candidates. If we are successful in entering into such agreements, we may not be able to negotiate agreements with economic terms similar to those negotiated by other companies. We may not, for example, obtain significant upfront payments, substantial royalty rates or milestones. If we fail to enter into any such agreements in a timely manner or at all, our efforts to develop and/or commercialize our product candidates may be undermined. In addition, if we do not raise funds through any such agreements, we will need to rely on other financing mechanisms, such as sales of debt or equity securities, to fund our operations. Such financing mechanisms, if available, may not be sufficient or timely enough to advance our programs forward in a meaningful way in the short-term.

We may not be successful in entering into additional collaborations as a result of many factors, including the following:

- competition in seeking appropriate collaborators;
- a reduced number of potential collaborators due to recent business combinations in the pharmaceutical industry;
- inability to negotiate collaborations on acceptable terms;
- inability to negotiate collaborations on a timely basis;
- a potential collaborator's evaluation of our product or product candidates;
- a potential collaborator's resources and expertise; and
- restrictions due to an existing collaboration agreement.

If we are unable to enter into collaborations, we may have to curtail the commercialization or the development of any product candidate on which we are seeking to collaborate, reduce or delay its development program or those for other of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to develop or commercialize our product candidates.

Even if we enter into collaboration agreements and strategic partnerships or license our intellectual property, we may not be able to maintain them or they may be unsuccessful, which could delay our timelines or otherwise adversely affect our business.

Any collaborators or licensees of our technologies and services will not be able to commercialize our product candidates if preclinical studies do not produce successful results or clinical trials do not demonstrate safety and efficacy in humans.

Preclinical and clinical testing is expensive, difficult to design and implement, can take many years to complete and have an uncertain outcome. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and interim results of a clinical trial do not necessarily predict final results. Any licensees and collaborators may experience numerous unforeseen events during, or as a result of, preclinical testing and the clinical trial process that could delay or prevent the commercialization of product candidates based on our technologies, including the following:

- Preclinical or clinical trials may produce negative or inconclusive results, which may require additional preclinical testing, additional clinical trials or the abandonment of projects that we, our licensees or our collaborators expect to be promising. For example, promising animal data may be obtained about the anticipated efficacy of a product candidate and then human tests may not result in such an effect. In addition, unexpected safety concerns may be encountered that would require further testing even if the product candidate produced an otherwise favorable response in human subjects.
- Initial clinical results may not be supported by further or more extensive clinical trials. For example, a licensee may obtain data that suggest a desirable response from a product candidate in a small human study, but when tests are conducted on larger numbers of people, the same extent of response may not occur. If the response generated by a product candidate is too low or occurs in too few treated individuals, then the product candidate will have no commercial value.
- Enrollment in any of our licensee's or collaborator's clinical trials may be slower than projected, resulting in significant delays. The cost of conducting a clinical trial increases as the time required to enroll adequate numbers of human subjects to obtain meaningful results increases. Enrollment in a clinical trial can be a slower-than-anticipated process because of competition from other clinical trials, because the study is not of interest to qualified subjects, or because the stringency of requirements for enrollment limits the number of people who are eligible to participate in the clinical trial.
- We, our licensees or our collaborators might have to suspend or terminate clinical trials if the participating subjects are being exposed to unacceptable health risks. Animal tests do not always adequately predict

potential safety risks to human subjects. The risk of any product candidate is unknown until it is tested in human subjects, and if subjects experience adverse events during the clinical trial, the trial may have to be suspended and modified or terminated entirely.

- Regulators or institutional review boards may suspend or terminate clinical research for various reasons, including safety concerns or noncompliance with regulatory requirements.
- Any regulatory approval ultimately obtained may be limited or subject to restrictions or post-approval commitments that render the product not commercially viable.
- The effects of our technology-derived or technology-enhanced product candidates may not be the desired effects or may include undesirable side effects.

Significant clinical trial delays could allow our competitors to bring products to market before we, any of our licensees or our collaborators do and impair our ability to commercialize our technologies and product candidates based on our technologies. Poor clinical trial results or delays may make it impossible to license a product candidate or so reduce its attractiveness to prospective licensees that we will be unable to successfully develop and commercialize such a product candidate.

Because our development activities are expected to rely heavily on sensitive and personal information, an area which is highly regulated by privacy laws, we may not be able to generate, maintain or access essential patient samples or data to continue our research and development efforts in the future on reasonable terms and conditions, which may adversely affect our business.

Although we are not subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as we are neither a Covered Entity nor Business Associate (as defined in HIPAA and the Health Information Technology and Clinical Health Act (the “HITECH Act”)), we may have access to very sensitive data regarding patients whose tissue samples are used in our studies. This data will contain information that is personal in nature. The maintenance of this data is subject to certain privacy-related laws, which impose upon us administrative and financial burdens, and litigation risks. In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws and federal and state consumer protection laws govern the collection, use, disclosure and protection of health-related and other personal information. For instance, the rules promulgated by the Department of Health and Human Services under HIPAA create national standards to protect patients’ medical records and other personal information in the U.S. These rules require that healthcare providers and other covered entities obtain written authorizations from patients prior to disclosing protected health care information of the patient to companies. If the patient fails to execute an authorization or the authorization fails to contain all required provisions, then we will not be allowed access to the patient’s information and our research efforts can be substantially delayed. Furthermore, use of protected health information that is provided to us pursuant to a valid patient authorization is subject to the limits set forth in the authorization (i.e., for use in research and in submissions to regulatory authorities for product approvals). As such, we are required to implement policies, procedures and reasonable and appropriate security measures to protect individually identifiable health information we receive from covered entities, and to ensure such information is used only as authorized by the patient. Any violations of these rules by us could subject us to civil and criminal penalties and adverse publicity and could harm our ability to initiate and complete clinical trials required to support regulatory applications for our product candidates. In addition, HIPAA does not replace federal, state, or other laws that may grant individuals even greater privacy protections.

In addition, California recently enacted the California Consumer Privacy Act (“CCPA”), which creates new individual privacy rights for California consumers and places increased privacy and security obligations on entities handling personal data of consumers or households. The CCPA will require covered companies to provide new disclosure to consumers about such companies’ data collection, use and sharing practices, provide such consumers new ways to opt-out of certain sales or transfers of personal information, and provide consumers with additional causes of action. The CCPA went into effect on January 1, 2020, and the California Attorney General may bring enforcement actions for violations beginning July 1, 2020. The CCPA, among other things, requires covered companies to provide disclosures to California consumers concerning the collection and sale of personal information, and will give such consumers the right to opt-out of certain sales of personal information. The CCPA may increase our company`s compliance costs and potential liability, and we cannot yet predict the impact of the CCPA on our business.

International data protection laws, including Regulation 2016/679, known as the General Data Protection Regulation (“GDPR”), may also apply to health-related and other personal information obtained outside of the United States. The GDPR went into effect on May 25, 2018. The GDPR strengthened data protection requirements in the European Union, as well as potential fines for noncompliant companies of up to the greater of €20 million or 4% of annual global revenue. The regulation imposes numerous new requirements for the collection, use, storage and disclosure of personal information, including more stringent requirements relating to consent and the information that must be shared with data subjects about how their personal information is used, the obligation to notify regulators and affected individuals of personal data breaches, extensive new

internal privacy governance obligations and obligations to honor expanded rights of individuals in relation to their personal information, including the right to access, correct and delete their data. In addition, the GDPR includes restrictions on cross-border data transfers. The GDPR increased our responsibility and liability in relation to personal data that we process where such processing is subject to the GDPR, and we may be required to put in place additional mechanisms to ensure compliance with the GDPR, including as implemented by individual countries. Further, the United Kingdom's exit from the European Union, often referred to as Brexit, has created uncertainty with regard to data protection regulation in the United Kingdom. In particular, it is unclear how data transfers to and from the United Kingdom will be regulated.

Failure to comply with data protection laws and regulations could result in government enforcement actions, which may involve civil and criminal penalties, private litigation and/or adverse publicity and could negatively affect our operating results and business. Claims that we have violated individuals' privacy rights or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

We can provide no assurance that future legislation will not prevent us from generating or maintaining personal data or that patients will consent to the use of their personal information, either of which may prevent us from undertaking or publishing essential research. These burdens or risks may prove too great for us to reasonably bear and may adversely affect our ability to achieve profitability or maintain profitably in the future.

Our therapeutic product candidates for which we intend to seek approval as biological products may face competition sooner than expected.

With the enactment of the Biologics Price Competition and Innovation Act of 2009 ("BPCIA") as part of the Health Care Reform Law, an abbreviated pathway for the approval of biosimilar and interchangeable biological products was created. The new abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics, including the possible designation of a biosimilar as "interchangeable." The FDA defines an interchangeable biosimilar as a product that, in terms of safety or diminished efficacy, presents no greater risk when switching between the biosimilar and its reference product than the risk of using the reference product alone. Under the BPCIA, an application for a biosimilar product cannot be submitted to the FDA until four years, or approved by the FDA until 12 years, after the original brand product identified as the reference product was approved under a BLA. The new law is complex and is only beginning to be interpreted by the FDA. As a result, its ultimate impact, implementation and meaning are subject to uncertainty. While it is uncertain when any such processes may be fully adopted by the FDA, any such processes could have a material adverse effect on the future commercial prospects for our biological products.

Although we believe that if any of our product candidates were to be approved as biological products under a BLA, such approved products should qualify for the 12-year period of exclusivity, there is a risk that the U.S. Congress could amend the BPCIA to significantly shorten this exclusivity period, potentially creating the opportunity for generic competition sooner than anticipated. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of our reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing. In addition, a competitor could decide to forego the biosimilar route and submit a full BLA after completing its own preclinical studies and clinical trials. In such cases, any exclusivity to which we may be eligible under the BPCIA would not prevent the competitor from marketing its product as soon as it is approved.

The regulatory path forward for biosimilar/biobetter product candidates is not clear.

We have acquired and are assessing the regulatory and strategic path forward for our portfolio of late stage biosimilar/biobetter antibodies based on Erbitux®, Remicade®, Xolair® and Simulect®. While the enactment of the BPCIA created an abbreviated pathway for the approval of biosimilar and interchangeable biological products, there is still considerable uncertainty with respect to the FDA's approval process. While applications based on biosimilarity may not be required to duplicate the entirety of preclinical and clinical testing used to establish the underlying safety and effectiveness of the reference product, the FDA may refuse to approve an application if there is insufficient information to show that the active ingredients are the same or to demonstrate that any impurities or differences in active ingredients do not affect the safety, purity or potency of the product. In addition, applications based on biosimilarity will not be approved unless the product is manufactured in facilities designed to assure and preserve the biological product's safety, purity and potency. Due to the uncertainty surrounding the approval of biosimilar/biobetter products, as well as other risk factors identified in this Annual Report on Form 10-K, our portfolio of late stage biosimilar/biobetter antibodies may never result in commercially viable products.

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

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

If we are unable to retain and recruit qualified scientists and advisors, or if any of our key executives, key employees or key consultants discontinues his or her employment or consulting relationship with us, it may delay our development efforts or otherwise harm our business.

We may not be able to attract or retain qualified management and scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses, particularly in the San Diego, California area. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to attract, retain and motivate necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the successful development of any product candidates, our ability to raise additional capital and our ability to implement our overall business strategy. In addition, our CMO operations will depend, in part, on our ability to attract and retain an appropriately skilled and sufficient workforce to operate our development and manufacturing facilities. The facilities are located in a growing biotechnology hub and competition for skilled workers will continue to increase as the industry undergoes further growth in the area.

We are highly dependent on key members of our management and scientific staff, especially Henry Ji, Ph.D., Chief Executive Officer and President, and Jiong Shao, Executive Vice President and Chief Financial Officer. Our success also depends on our ability to continue to attract, retain and motivate highly skilled junior, mid-level and senior managers as well as junior, mid-level and senior scientific and medical personnel. The loss of any of our executive officers, key employees or key consultants and our inability to find suitable replacements could impede the achievement of our research and development objectives, and potentially harm our business, financial condition and prospects. Furthermore, recruiting and retaining qualified scientific personnel to perform research and development work in the future is critical to our success. We may be unable to attract and retain personnel on acceptable terms given the competition among biotechnology, biopharmaceutical and health care companies, universities and non-profit research institutions for experienced scientists. Certain of our current officers, directors, scientific advisors and/or consultants or certain of the officers, directors, scientific advisors and/or consultants hereafter appointed may from time to time serve as officers, directors, scientific advisors and/or consultants of other biopharmaceutical or biotechnology companies. We do not maintain “key man” insurance policies on any of our officers or employees. All of our employees are employed “at will” and, therefore, each employee may leave our employment at any time.

We may not be able to attract or retain qualified management and scientific personnel in the future due to the intense competition for a limited number of qualified personnel among biopharmaceutical, biotechnology, pharmaceutical and other businesses. Many of the other pharmaceutical companies that we compete against for qualified personnel have greater financial and other resources, different risk profiles and a longer history in the industry than we do. They also may provide more diverse opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high quality candidates than what we have to offer. If we are unable to continue to attract and retain high quality personnel, the rate and success at which we can develop and commercialize product candidates will be limited.

We plan to grant stock options or other forms of equity awards in the future as a method of attracting and retaining employees, motivating performance and aligning the interests of employees with those of our stockholders. If we are unable to implement and maintain equity compensation arrangements that provide sufficient incentives, we may be unable to retain our existing employees and attract additional qualified candidates. If we are unable to retain our existing employees, including qualified scientific personnel, and attract additional qualified candidates, our business and results of operations could be adversely affected.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a material adverse effect 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, provide accurate information to the FDA, comply with manufacturing standards we have established, comply with federal and state health-care fraud and abuse laws and regulations, comply with laws and regulations (including, but not limited to the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1 (“FCPA”)) and internal policies restricting payments to government agencies and representatives, 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. We have adopted a Code of Business Conduct and Ethics, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent 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 may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws, false claims laws and health information privacy and security laws. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties.

If we obtain FDA approval for any of our product candidates, as we have with ZTlido through Scilex Pharma, and begin commercializing those products in the U.S., our operations may be directly, or indirectly through our customers, subject to various federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act. These laws may impact, among other things, our proposed sales, marketing and education programs. In addition, we may be subject to patient privacy regulation by both the federal government and the states in which we conduct our business. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs;
- federal civil and criminal false claims laws and civil monetary penalty 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 third-party payers that are false or fraudulent;
- HIPAA, which created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;
- HIPAA, as amended by the HITECH Act, and its implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information; 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 payer, including commercial insurers, and state laws governing 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.

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 penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the clinical testing of our product candidates and will face an even greater risk for the commercialization of any products, including ZTlido, which is marketed and sold through our subsidiary, Scilex Holding. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates, if approved. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our product candidates or products that we may develop;
- injury to our reputation;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market or voluntary or mandatory product recalls;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenues from product sales; and
- the inability to commercialize our product candidates.

In addition, through our contract manufacturing operations, we may manufacture product candidates intended for use in humans. These activities could expose us to risk of liability for personal injury or death to persons using such product candidates or approved products. We seek to reduce our potential liability through measures such as contractual indemnification provisions with collaborators (the scope of which may vary by collaborator, and the performances of which are not secured) and insurance maintained by us and our collaborators. Our business, financial condition and results of operations could be materially adversely affected if we are required to pay damages or incur defense costs in connection with a claim that is outside the scope of the indemnification agreements, if the indemnity, although applicable, is not performed in accordance with its terms or if our liabilities exceed the amount of applicable insurance or indemnity. In addition, we could be held liable for errors and omissions in connection with the services we perform.

Our inability to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we develop. We currently carry product liability insurance and errors and omissions insurance that we believe is appropriate for our company. Although we maintain product liability insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. Our insurance policies also have various exclusions, and we may be subject to a product liability claim for which we have insufficient or no coverage. If we have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, we may not have, or be able to obtain, sufficient capital to pay such amounts. In addition, insurance coverage is becoming increasingly expensive, and we may not be able to maintain insurance coverage at a reasonable cost. We also may not be able to obtain additional insurance coverage that will be adequate to cover product liability risks that may arise. Consequently, a product liability claim may result in losses that could be material to our business, financial condition and results of operations.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures, and legal expenses, which could adversely affect our business, results of operations and financial condition.

Our operations are subject to certain anti-corruption laws, including the FCPA, and other anti-corruption laws that apply in countries where we do business. The FCPA and other anti-corruption laws generally prohibit us and our employees and intermediaries from bribing, being bribed or making other prohibited payments to government officials or other persons to obtain or retain business or gain some other business advantage. We and our commercial partners operate in a number of jurisdictions that pose a high risk of potential FCPA violations and we participate in collaborations and relationships with third parties whose actions could potentially subject us to liability under the FCPA or local anti-corruption laws. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

We are also subject to other laws and regulations governing our international operations, including regulations administered in the U.S. and in the EU, including applicable import and export control regulations such as those regulations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention ("CITES"), economic sanctions on countries and persons, customs requirements and currency exchange regulations (collectively, "Trade Control Laws").

There can be no assurance that we will be completely effective in ensuring our compliance with all applicable anticorruption laws, including the FCPA or other legal requirements, such as Trade Control Laws. Any investigation of potential violations of the FCPA, other anti-corruption laws or Trade Control Laws by U.S., EU or other authorities could have an adverse impact on our reputation, our business, results of operations and financial condition. Furthermore, should we be

found not to be in compliance with the FCPA, other anti-corruption laws or Trade Control Laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, as well as the accompanying legal expenses, any of which could have a material adverse effect on our reputation and liquidity, as well as on our business, results of operations and financial condition.

Federal regulation and enforcement may adversely affect the implementation of cannabis laws, and such regulations may negatively impact our business operations, revenues and profits.

As previously disclosed, we have formed a Chinese joint venture with LifeTech Scientific Co., Ltd. to commercialize our proprietary water soluble cannabidiol ("CBD") formulation technologies for consumer and pharmaceutical applications in Asia (excluding Japan). We have also formed a new business unit, Scintilla Health, Inc., to explore commercial opportunities of our water-soluble CBD formulation technologies for both consumer and pharmaceutical applications in North America, Europe and other parts of the world.

Currently, there are over 30 states in the United States, plus the District of Columbia, that have laws and/or regulations that recognize, in one form or another, medical benefits or other uses for CBD infused or cannabis related products. These states have also passed laws governing the use and sale of cannabis products and others are considering similar legislation. Nonetheless, at least some provisions of these state laws are in direct conflict with the United States Federal Controlled Substances Act (21 U.S.C. § 811) ("CSA"), which places controlled substances, including cannabis, in a schedule. Cannabis is classified as a Schedule I drug, which is viewed as having a high potential for abuse, has no currently-accepted use for medical treatment in the U.S., and lacks acceptable safety for use under medical supervision. Under the CSA, the policies and regulations of the federal government and its agencies are that cannabis has no medical benefit and a range of activities including cultivation and the personal use of cannabis is prohibited.

Uncertainty remains the rule under the CSA. There is disagreement between the government and the courts regarding the precise scope of the CSA. Some courts have held that CBD is excluded from the CSA, which they believe, only covers the Tetrahydrocannabinol ("THC") chemical. Others have held that CBD is covered by the CSA when it is derived from the cannabis plant. On December 20, 2018, the Agricultural Improvement Act of 2018 (the "2018 Farm Bill") legalized the cultivation and production of hemp, a variation on the cannabis plant that contains CBD but less than 0.3% THC (the psychoactive chemical of the cannabis plant), providing at least some certainty about sources of legal CBD. Our water-soluble CBD formulation technologies are expected to utilize hemp.

Unless and until Congress amends the CSA to clarify precisely what is covered by the CSA, there is a risk that federal authorities may enforce current federal law against us despite our efforts to source our products from legal sources, and we may be deemed to be producing and/or dispensing marijuana-based products in violation of federal law. There is no assurance as to the timing or scope of any such potential amendment to the CSA. Active enforcement of the current federal regulatory position on cannabis may thus directly or indirectly, and adversely, affect our business, operations, revenues and any profits. The risk of strict enforcement of the CSA in light of Congressional activity, judicial holdings and stated federal policy remains uncertain.

The Department of Justice ("DOJ") has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for use on private property and has instead relied on state and local law enforcement to address marijuana activity. In the event the DOJ reverses its stated policy and begins strict enforcement of the CSA in states that have laws legalizing medical marijuana and recreational marijuana in small amounts, there may be a direct and adverse impact to our business and our revenue and profits. Furthermore, H.R. 83, enacted by Congress on December 16, 2014, provides that none of the funds made available to the DOJ pursuant to the 2015 Consolidated and Further Continuing Appropriations Act may be used to prevent certain states from implementing their own laws that authorized the use, distribution, possession or cultivation of medical marijuana.

Under the 2018 Farm Bill, the FDA has been given the authority to regulate CBD when incorporated into a food, drug or cosmetic substance. Immediately following the passage of the 2018 Farm Bill, the FDA signaled its intent to use this power. On May 31, 2019, the FDA held public hearings to obtain scientific data and information about the safety, manufacturing, product quality, marketing, labeling and sale of products containing cannabis or cannabis-derived compounds, including CBD. Currently, the FDA has not issued any guidance, rules or regulations regarding the use of CBD in foods, drugs or cosmetics. Because our water-soluble CBD formulation technologies may be used to produce CBD for inclusion in food or beverages, any FDA rules and regulations limiting our ability to source, manufacture and sell CBD products, or limiting the consumer's ability to purchase and use the products, could have a material adverse effect on our business, financial condition and results of operations.

We will need to increase the size of our company and may not effectively manage our growth.

Our success will depend upon growing our business and our employee base. Over the next 12 months, we plan to add additional employees to assist us with research and development and in Scilex Holding with commercialization efforts. Our future growth, if any, may cause a significant strain on our management, and our operational, financial and other resources. Our ability to manage our growth effectively will require us to implement and improve our operational, financial and management systems and to expand, train, manage and motivate our employees. These demands may require the hiring of additional management personnel and the development of additional expertise by management. Any increase in resources devoted to research and product development without a corresponding increase in our operational, financial and management systems could have a material adverse effect on our business, financial condition, and results of operations.

A fast track product designation or other designation to facilitate product candidate development may not lead to faster development or regulatory review or approval process, and it does not increase the likelihood that our product candidates will receive marketing approval.

A product sponsor may apply for fast track designation from the FDA if a product is intended for the treatment of a serious or life-threatening condition and preclinical or clinical data demonstrate the potential to address an unmet medical need for this condition ("Fast Track Designation"). The FDA has broad discretion whether or not to grant this designation. We have received Fast Track Designation for SEMDEXA™, which is in development for the treatment of lumbosacral radicular pain. Even though SEMDEXA™ has received Fast Track Designation, we may not experience a faster process, review or approval compared to conventional FDA procedures. Fast Track Designation does not accelerate clinical trials, mean that regulatory requirements are less stringent or provide assurance of ultimate marketing approval by the FDA. Instead, Fast Track Designation provides opportunities for frequent interactions with FDA review staff, as well as eligibility for priority review, if relevant criteria are met, and rolling review. The FDA may rescind the fast track designation if it believes that the designation is no longer supported by data from our clinical development program. The FDA may also withdraw any fast track designation at any time.

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.

Clinical testing is expensive and can take many years to complete, and its outcome is risky and uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials. It is not uncommon for companies in the pharmaceutical industry to suffer significant setbacks in advanced clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials. Our future clinical trial results may not be successful.

This drug candidate development risk is heightened by any changes in the planned clinical trials compared to the completed clinical trials. As product candidates are developed through preclinical to early and late stage clinical trials towards approval and commercialization, it is customary that various aspects of the development program, such as manufacturing and methods of administration, are altered along the way in an effort to optimize processes and results. While these types of changes are common and are intended to optimize the product candidates for late stage clinical trials, approval and commercialization, such changes do carry the risk that they will not achieve these intended objectives.

Other than with respect to ZTlido, we have not completed a corporate-sponsored clinical trial. Phase I trials are ongoing for RTX for knee osteoarthritis, RTX for cancer-related pain, anti-CD38 CAR-T for multiple myeloma and anti-CEA CAR-T for intrahepatic CEA positive metastases and for intraperitoneal tumor implantation (malignant ascites). Despite this, we may not have the necessary capabilities, including adequate staffing, to successfully manage the execution and completion of any clinical trials we initiate, including our planned clinical trials of RTX, clinical trials of CAR-T including targeting CD38 using a CAR-T cell therapy, our biosimilar/biobetters antibodies and other product candidates, in a way that leads to our obtaining marketing approval for our product candidates in a timely manner, or at all.

In the event we are able to conduct a pivotal clinical trial of a product candidate, the results of such trial may not be adequate to support marketing approval. Because our product candidates are intended for use in life-threatening diseases, in some cases we ultimately intend to seek marketing approval for each product candidate based on the results of a single pivotal clinical trial. As a result, these trials may receive enhanced scrutiny from the FDA. For any such pivotal trial, if the FDA disagrees with our choice of primary endpoint or the results for the primary endpoint are not robust or significant relative to control, are subject to confounding factors, or are not adequately supported by other study endpoints, including possibly overall

survival or complete response rate, the FDA may refuse to approve a NDA, Biologics License Application or other application for marketing based on such pivotal trial. The FDA may require additional clinical trials as a condition for approving our product candidates.

Interim "top-line" and preliminary data from our clinical trials that we announce or publish from time to time 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.

From time to time, we may publish interim "top-line" 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 more comprehensive review of the data related to the particular study. 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 topline results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Preliminary or 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 and dosing continues and more patient data become available. Preliminary or interim 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, interim and preliminary data should be viewed with caution until the final data are available. Adverse differences between preliminary or interim data and final data could significantly harm our business, financial condition and results of operations.

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 company in general. Data disclosures must be carefully managed to conform to limitations on preapproval promotion and laws related to clinical trial registration and posting of results. 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, product candidate or our business. If the top-line data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, and commercialize, our product candidates may be harmed, which could harm our business, financial condition and results of operations.

Any disruption in our research and development facilities could adversely affect our business, financial condition and results of operations.

Our principal executive offices, which house our research and development programs, are in San Diego, California. Our facilities may be affected by natural or man-made disasters. Earthquakes are of particular significance since our facilities are located in an earthquake-prone area. We are also vulnerable to damage from other types of disasters, including power loss, attacks from extremist organizations, fires, floods and similar events. If our facilities are affected by a natural or man-made disaster, we may be forced to curtail our operations and/or rely on third-parties to perform some or all of our research and development activities. Although we believe we possess adequate insurance for damage to our property and the disruption of our business from casualties, such insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all. In the future, we may choose to expand our operations in either our existing facilities or in new facilities. If we expand our worldwide manufacturing locations, there can be no assurance that this expansion will occur without implementation difficulties, or at all.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our CROs and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, cybersecurity attacks or hacking, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our drug development programs. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach was to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur material legal claims and liability, damage to our reputation, suffer loss or harm to our intellectual property rights and the

further research, development and commercial efforts of our products and product candidates could be delayed. If we are held liable for a claim against which we are not insured or for damages exceeding the limits of our insurance coverage, whether arising out of cybersecurity matters, or from some other matter, that claim could have a material adverse effect on our results of operations.

Further, a cybersecurity attack, data breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, resulting in increased costs or loss of revenue. Our ability to effectively manage and maintain our internal business information, and to ship products to customers and invoice them on a timely basis, depends significantly on our enterprise resource planning system and other information systems. Portions of our information technology systems may experience interruptions, delays or cessations of service or produce errors in connection with ongoing systems implementation work. Cybersecurity attacks in particular are evolving and include, but are not limited to, threats, malicious software, ransom ware, attempts to gain unauthorized access to data and other electronic security breaches that could lead to disruptions in systems, misappropriation of confidential or otherwise protected information and corruption of data. If we are unable to prevent such cybersecurity attacks, data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above.

The terms of our outstanding debt place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

On September 7, 2018, Scilex Pharma issued and sold senior secured notes due 2026 in an aggregate principal amount of $224,000,000 (the “Scilex Notes”) for an aggregate purchase price of $140,000,000 (the “Scilex Offering”). In connection with the Scilex Offering, we also entered into an indenture, as amended (the “Scilex Indenture”), governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the “Trustee”) and collateral agent, and Scilex Pharma. Pursuant to the Scilex Indenture, we agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex Pharma under the Scilex Indenture.

The Scilex Indenture governing the Scilex Notes contains customary events of default with respect to the Scilex Notes (including a failure to make any payment of principal on the Scilex Notes when due and payable), and, upon certain events of default occurring and continuing, the Trustee by notice to Scilex Pharma, or the holders of at least 25% in principal amount of the outstanding Scilex Notes by notice to Scilex Pharma and the Trustee, may (subject to the provisions of the Scilex Indenture) declare 100% of the then-outstanding principal amount of the Scilex Notes to be due and payable. Upon such a declaration of acceleration, such principal will be due and payable immediately. In the case of certain events, including bankruptcy, insolvency or reorganization involving us or Scilex Pharma, the Scilex Notes will automatically become due and payable.

Pursuant to the Scilex Indenture, we and Scilex Pharma must also comply with certain covenants with respect to the commercialization of ZTlido, as well as customary additional affirmative covenants, such as furnishing financial statements to the holders of the Scilex Notes, minimum cash requirements and net sales reports, and negative covenants, including limitations on the following: the incurrence of debt, the payment of dividends, the repurchase of shares and, under certain conditions, making certain other restricted payments, the prepayment, redemption or repurchase of subordinated debt, a merger, amalgamation or consolidation involving Scilex Pharma, engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Scilex Indenture.

On November 7, 2018, we and certain of our domestic subsidiaries (the “Guarantors”) entered into a Term Loan Agreement (the “Initial Loan Agreement”) with certain funds and accounts managed by Oaktree Capital Management, L.P. (collectively, the “Lenders”) and Oaktree Fund Administration, LLC, as administrative and collateral agent (the "Agent"), for an initial term loan of $100.0 million (the “Initial Loan”) and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019, and the satisfaction of certain customary conditions (the "Original Delayed Draw Term Loan"). The Initial Loan was funded on November 7, 2018. On May 3, 2019, we, the Guarantors, the Lenders and the Agent entered into an amendment to the Initial Loan Agreement (the “First Amendment”). Under the First Amendment, the Lenders funded $20.0 million of the Original Delayed Draw Term Loan on May 3, 2019. On December 6, 2019, we, the Guarantors, the Lenders and the Agent entered into a second amendment to the Initial Loan Agreement (the “Second Amendment” and, the Initial Loan Agreement, as amended, the “Loan Agreement”). The Loan Agreement contains customary affirmative and restrictive covenants and representations and warranties, including

financial reporting obligations, financial milestones and limitations on indebtedness, liens, negative pledges, certain restricted payments, subsidiary distributions, investments, fundamental transactions, dispositions of assets and transactions with affiliates. In addition, we have committed to meet minimum capital-raising and debt repayment requirements in the first quarter of 2020, and to pursue debt restructuring arrangements and the sale of one or more non-core assets in the first half of 2020. The Loan Agreement also contains other customary provisions, such as expense reimbursement and confidentiality obligations, as well as indemnification rights for the benefit of the Lenders.

For purposes of the Scilex Indenture and the Loan Agreement, an event of default includes, among other things, (i) a failure to pay any amounts when due under such agreements, (ii) a breach or other failure to comply with the covenants (including financial, notice and reporting covenants) under such agreements, (iii) a failure to make any payment on, or other event triggering an acceleration under, other material indebtedness of the Company, which would include, with respect to the Loan Agreement, a failure or acceleration under the Scilex Indenture, and with respect to the Scilex Indenture, a failure or acceleration under the Loan Agreement, and (iv) the occurrence of certain insolvency or bankruptcy events (both voluntary and involuntary) involving us or certain of our subsidiaries.

If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

Our ability to utilize our net operating loss and tax credit carryforwards may be limited.

Section 382 of the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder ("Section 382") limit a corporation's ability to utilize existing net operating loss and tax credit carryforwards once the corporation experiences an ownership change as defined in Section 382. We have undergone an ownership change for purposes of Section 382 in a prior year. For the year ended December 31, 2019, there was no impact of such limitations on our income tax provision. Since our last ownership change we have had equity offerings or acquisitions that have equity as a component of the purchase price, which increases our likelihood of experiencing a future ownership change under Section 382. Future equity offerings or acquisitions that have equity as a component of the purchase price could constitute an ownership change under Section 382. If and when any other ownership change occurs, utilization of our net operating loss and tax credit carryforwards may be limited by Section 382, which could potentially result in increased future tax liability to us.

Comprehensive tax reform legislation could adversely affect our business and financial condition.

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (the "TCJA"), which lowered the U.S. corporate income tax rate. Our effective income tax rate in the future could be adversely affected by a number of factors, including: changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, changes in tax laws, and the outcome of income tax audits in various jurisdictions. We regularly assess all of these matters to determine the adequacy of its tax provision, which is subject to significant discretion.

The TCJA is unclear in certain respects and could be subject to potential amendments and technical corrections, as well as interpretations and implementing regulations by the Treasury and Internal Revenue Service (IRS), any of which could lessen or increase certain adverse impacts of the legislation. In addition, it is unclear how these U.S. federal income tax changes will affect state and local taxation, which often uses federal taxable income as a starting point for computing state and local tax liabilities. While some of the changes made by the tax legislation may adversely affect us in one or more reporting periods and prospectively, other changes may be beneficial on a going forward basis. We are still evaluating certain provisions included in the TCJA and therefore not completed our full assessment. As such, there may be material adverse effects resulting from the Tax Act that we have not yet identified.

Our operations in China subject us to risks and uncertainties relating to the laws and regulations of China.

Certain of our operations are currently based in China. Under its current leadership, the government of China has been pursuing economic reform policies, including by encouraging foreign trade and investment. However, there is no assurance that the Chinese government will continue to pursue such policies, that such policies will be successfully implemented, that such policies will not be significantly altered, or that such policies will be beneficial to our operations in China. China's system of laws can be unpredictable, especially with respect to foreign investment and foreign trade. The promulgation of new laws and regulations and changes to existing laws and regulations may adversely affect foreign investors and foreign entities with operations in China. For example, the U.S. government has called for substantial changes to foreign trade policy with China and has recently raised, and has proposed to further raise in the future, tariffs on several Chinese goods. China has retaliated with increased tariffs on U.S. goods, which we anticipate will increase our cost of doing business in China. Any further changes in U.S. trade policy could trigger retaliatory actions by affected countries, including China, resulting in trade wars and in increased costs for goods imported into the United States and our ability to sell goods and services in the affected countries. Such an

outcome may reduce customer demand for our products and services, especially if parties required to pay those tariffs increase their prices, or if trading partners limit their trade with the United States. If these consequences are realized, this may materially and adversely affect our sales and our business.

Additionally, the biopharmaceutical industry in China is strictly regulated by the Chinese government. Changes to Chinese regulations affecting biopharmaceutical companies are unpredictable and may have a material adverse effect on our Chinese operations and on our business and financial condition.

Our global operations are exposed to political and economic risks, commercial volatility and events beyond our control in the countries in which we operate, some of which may be enhanced by our recent acquisition of Virttu Biologics Limited.

On April 27, 2017, we acquired Virttu Biologics Limited ("Virttu"), which is based in the United Kingdom. In addition to challenges specific to the United States, our operations, including but not limited to our operations outside of the United States, are subject to a variety of political and economic risks, including risks arising from:

- unexpected changes in international or domestic legal, regulatory or governmental requirements or regulations, including related to intellectual property or the biopharmaceutical industry;
- unexpected increases in taxes or tariffs;
- trade protection measures or import or export licensing requirements;
- the inability to obtain necessary foreign regulatory or pricing approvals of products in a timely manner;
- fluctuations in foreign currency exchange rates;
- difficulties in staffing and managing international operations;
- less favorable intellectual property or other applicable laws;
- the effects of the implementation of the United Kingdom's decision to voluntarily depart from the European Union;
- currency controls that restrict or prohibit the payment of funds or the repatriation of earnings to the United States;
- increased costs of compliance with general business and tax regulations in these countries or regions;
- divergent legal systems and regulatory frameworks; and
- political and economic instability or corruption.

These risks and others may have a material adverse effect on our global operations and on our business and financial condition.

Uncertainty relating to the determination of LIBOR and the potential phasing out of LIBOR after 2021 may adversely affect our results of operations, financial condition, liquidity and net worth.

We routinely engage in transactions involving financial instruments, such as the purchase of loans, securities or derivatives indexed to the London Interbank Offered Rate ("LIBOR") and the sale of LIBOR-indexed securities. In July 2017, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, announced its intention to stop persuading or compelling the group of major banks that sustain LIBOR to submit rate quotations after 2021. As a result, it is uncertain whether LIBOR will continue to be quoted after 2021.

Efforts are underway to identify and transition to a set of alternative reference rates. The transition may lead to disruption, including yield volatility on LIBOR-based securities. In addition, our use of an alternative reference rate may be subject to judicial challenges. If LIBOR ceases or changes in a manner that causes regulators or market participants to question its viability, financial instruments indexed to LIBOR could experience disparate outcomes based on their contractual terms, ability to amend those terms, market or product type, legal or regulatory jurisdiction, and a host of other factors. There can be no assurance that legislative or regulatory actions will dictate what happens if LIBOR ceases or is no longer viable. In addition, while the Alternative Reference Rates Committee was created to identify best practices for market participants regarding alternative interest rates, there can be no assurance that broadly adopted industry practices will develop. Divergent industry or market participant actions could result after LIBOR is no longer available or viable. It is uncertain what effect any divergent industry practices will have on the performance of financial instruments, including ones that we own or have issued. Additionally, if an alternative method or index to LIBOR is selected, there can be no assurance that the alternative method or index will yield the same or similar economic results over the lives of the financial instruments. These developments could have a material impact on our debt securities, which could adversely affect our business, financial condition, liquidity, net worth or results of operations.

We have significantly restructured our business and implemented a new segment reporting structure. Our two industry segments, designated as Sorrento Therapeutics and Scilex Pharma, have been in effect for a limited period of time and there are no assurances that we will be able to successfully operate as a restructured business.

We have traditionally focused on the discovery and development of innovative therapies focused on oncology and the treatment of chronic cancer pain as well as immunology and infectious diseases based on our platform technologies.

With our previous acquisition of a majority stake in Scilex Pharma, a developer of specialty pharmaceutical products for the treatment of chronic pain, and the subsequent contribution of such stake to our majority-owned subsidiary, Scilex Holding, in connection with Scilex Holding's acquisition of Semnur Pharmaceuticals, Inc. ("Semnur"), a pharmaceutical company developing an injectable product for the treatment of lower back pain, Scilex Holding will focus on non-opioid pain management.

Our strategy is based on a number of factors and assumptions, some of which are not within our control, such as the actions of third parties. There can be no assurance that we will be able to successfully execute all or any elements of our strategy, or that our ability to successfully execute our strategy will be unaffected by external factors. If we are unsuccessful in growing our business as planned, our financial performance could be adversely affected.

We are involved, and may become involved in the future, in disputes and other legal or regulatory proceedings that, if adversely decided or settled, could materially and adversely affect our business, financial condition and results of operations.

We are, and may in the future become, party to litigation, regulatory proceedings or other disputes. For example, on April 3, 2019, we filed two legal actions against, among others, Patrick Soon-Shiong and entities controlled by him, asserting claims for, among other things, fraud and breach of contract, arising out of Dr. Soon-Shiong's purchase of the drug Cynviloq™ from our company in May 2015. The actions allege that Dr. Soon-Shiong and the other defendants, among other things, acquired the drug Cynviloq™ for the purpose of halting its progression to the market. In general, claims made by or against us in disputes and other legal or regulatory proceedings can be expensive and time consuming to bring or defend against, requiring us to expend significant resources and divert the efforts and attention of our management and other personnel from our business operations. Any failure to prevail in any claims made by us or any adverse determination against us in these proceedings, or even the allegations contained in the claims, regardless of whether they are ultimately found to be without merit, may also result in settlements, injunctions or damages that could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Acquisitions

We have and plan to continue to acquire assets, businesses and technologies and may fail to realize the anticipated benefits of the acquisitions, and acquisitions can be costly and dilutive.

We have and plan to continue to expand our assets, business and intellectual property portfolio through the acquisition of new assets, businesses and technologies.

For example, in November 2016, we acquired a majority of the outstanding capital stock of Scilex Pharma, which was contributed to our majority-owned subsidiary Scilex Holding in connection with the corporate reorganization of Scilex Holding and acquisition of Semnur by Scilex Holding in March 2019. These assets, together, constitute our Scilex segment. We also acquired Virttu in 2017 and Sofusa® assets, a revolutionary drug delivery technology, in July 2018, and we are in the process of integrating this company and technology with ours.

The success of any acquisition depends on, among other things, our ability to combine our business with the acquired business in a manner that does not materially disrupt existing relationships and that allows us to achieve development and operational synergies. If we are unable to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In particular, the acquisition may not be accretive to our stock value or development pipeline in the near or long term.

It is possible that the integration process could result in the loss of key employees; the disruption of our ongoing business or the ongoing business of the acquired companies; or inconsistencies in standards, controls, procedures or policies that could adversely affect our ability to maintain relationships with third parties and employees or to achieve the anticipated benefits of the acquisition. Integration efforts between us and the acquired company will also divert management's attention from our core business and other opportunities that could have been beneficial to our stockholders. An inability to realize the full extent of, or any of, the anticipated benefits of the acquisition, as well as any delays encountered in the integration process, could have an adverse effect on our business and results of operations, which may affect the value of the shares of our common stock after the completion of the acquisition. If we are unable to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In particular, the acquisition may not be accretive to our stock value or development pipeline in the near or long term.

We expect to incur additional costs integrating the operations of any companies we acquire, higher development and regulatory costs, and personnel, which cannot be estimated accurately at this time. If the total costs of the integration of our companies and advancement of acquired product candidates and technologies exceed the anticipated benefits of the acquisition, our financial results could be adversely affected.

In addition, we may issue shares of our common stock or other equity-linked securities in connection with future acquisitions of businesses and technologies. Any such issuances of shares of our common stock could result in material dilution to our existing stockholders.

We may be required to make milestone payments to the former stockholders of Semnur in connection with our development and commercialization of SEMDEXA™, which could adversely affect the overall profitability of SEMDEXA™, if approved.

Under the terms of the Agreement and Plan of Merger Scilex Holding entered into with Semnur, Sigma Merger Sub, Inc., the prior wholly-owned subsidiary of Scilex Holding, Fortis Advisors LLC, solely as representative of the holders of Semnur equity (the "Semnur Equityholders"), and us, for limited purposes, Scilex Holding is obligated to pay the Semnur Equityholders up to an aggregate of $280.0 million in contingent cash consideration based on the achievement of certain milestones. A $40.0 million payment will be due upon obtaining the first approval of an NDA by the FDA of any Semnur product, which includes SEMDEXA™. Additional payments will be due upon the achievement of certain cumulative net sales of Semnur products, as follows:

- a $20.0 million payment upon the achievement of $100.0 million in cumulative net sales of a Semnur product;
- a $20.0 million payment upon the achievement of $250.0 million in cumulative net sales of a Semnur product;
- a $50.0 million payment upon the achievement of $500.0 million in cumulative net sales of a Semnur product; and;
- a $150.0 million payment upon the achievement of $750.0 million in cumulative net sales of a Semnur product.

These milestone obligations could impose substantial additional costs on our Scilex operating segment, divert resources from other aspects of its business, and adversely affect the overall profitability of SEMDEXA™, if approved. We may need to obtain additional financing to satisfy these milestone payments, and cannot be sure that any additional funding, if needed, will be available on terms favorable to us, or at all.

If we acquire companies or technologies in the future, they could prove difficult to integrate, disrupt our business, dilute stockholder value, and adversely affect our operating results and the value of our common stock.

As part of our business strategy, we may continue to acquire, enter into joint ventures with, or make investments in complementary or synergistic companies, services, and technologies in the future. Acquisitions and investments involve numerous risks, including:

- difficulties in identifying and acquiring products, technologies, proprietary rights or businesses that will help our business;
- difficulties in integrating operations, technologies, services, and personnel;
- diversion of financial and managerial resources from existing operations;
- the risk of entering new development activities and markets in which we have little to no experience;
- risks related to the assumption of known and unknown liabilities; and
- risks related to our ability to raise sufficient capital to fund additional operating activities.

As a result, if we fail to properly evaluate acquisitions or investments, we may not achieve the anticipated benefits of any such acquisitions, we may incur costs in excess of what we anticipate, and management resources and attention may be diverted from other necessary or valuable activities.

Any acquisitions we make could disrupt our business and seriously harm our financial condition.

We have in the past made (and may, from time to time, consider) acquisitions of complementary companies, products or technologies. Acquisitions involve numerous risks, including difficulties in the assimilation of the acquired businesses, the diversion of our management's attention from other business concerns and potential adverse effects on existing business relationships. In addition, any acquisitions could involve the incurrence of substantial additional indebtedness. We cannot assure you that we will be able to successfully integrate any acquisitions that we pursue or that such acquisitions will perform as planned or prove to be beneficial to our operations and cash flow. Any such failure could seriously harm our business, financial condition and results of operations.

Risks Related to Our Intellectual Property

Our ability to protect our intellectual property rights will be critically important to the success of our business, and we may not be able to protect these rights in the U.S. or abroad.

Our success, competitive position and future revenues will depend in part on our ability to obtain and maintain patent protection for our product candidates, methods, processes and other technologies, to prevent third parties from infringing on our proprietary rights, exclude others from using our technology and to operate without infringing upon the proprietary rights of third parties. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We attempt to protect our proprietary position by maintaining trade secrets and by filing U.S. and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business. The first of the antibody family patent applications was issued in 2014, and we continue to file additional patent applications for our product candidates and technology.

We have commenced generating a patent portfolio to protect each product candidate in our pipeline. However, the patent position of biopharmaceutical companies involves complex legal and factual questions, and therefore we cannot predict with certainty whether any patent applications that we have filed or that we may file in the future will be approved, will cover our products or product candidates or that any resulting patents will be enforced. In addition, third parties may challenge, seek to invalidate, limit the scope of or circumvent any of our patents, once they are issued. Thus, any patents that we own or license from third parties or joint venture or development partners may not provide any protection against competitors. Any patent applications that we have filed or that we may file in the future, or those we may license from third parties or joint venture or development partners, may not result in patents being issued. Moreover, disputes between our licensing or joint development partners and us may arise over license scope, or ownership, assignment, inventorship and/or rights to use or commercialize patent or other proprietary rights, which may adversely impact our ability to obtain and protect our proprietary technology and products. Also, patent rights may not provide us with adequate proprietary protection or competitive advantages against competitors with similar technologies or products.

In addition, the laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the U.S. If we fail to apply for intellectual property protection or if we cannot adequately protect our intellectual property rights in these foreign countries, our competitors may be able to compete more effectively against us, which could adversely affect our competitive position, as well as our business, financial condition and results of operations.

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications will be due to the PTO and various foreign patent offices at various points over the lifetime of our patents and/or applications. We have systems in place to remind us to pay these fees, and we rely on our outside counsel or service providers to pay these fees when due. Additionally, the PTO and various foreign patent offices require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with rules applicable to the particular jurisdiction. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If such an event were to occur, it could have a material adverse effect on our business. In addition, we are responsible for the payment of patent fees for patent rights that we have licensed from other parties. If any licensor of these patents does not itself elect to make these payments, and we fail to do so, we may be liable to the licensor for any costs and consequences of any resulting loss of patent rights.

We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents, trademarks, copyrights or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours is invalid or unenforceable, in whole or in part, and that we do not have the right to stop the other party from using the invention at issue. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent's claims narrowly or decide that we do not have the right to stop the other party from using the invention at issue on the grounds that our patent claims do not cover the invention. An adverse outcome in a litigation or proceeding involving our patents could limit our ability to assert our patents against those parties or other competitors, and may curtail or preclude our ability to exclude third parties from making and selling similar or competitive products. Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of shares of our common stock. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

Our long-term success depends on intellectual property protection; if our intellectual property rights are invalidated or circumvented, our business will be adversely affected.

Our long-term success depends on our ability to continually discover, develop and commercialize innovative new pharmaceutical products. Without strong intellectual property protection, we would be unable to generate the returns necessary to support the enormous investments in research and development and capital as well as other expenditures required to bring new drugs to the market and for commercialization.

Intellectual property protection varies throughout the world and is subject to change over time. In the U.S., for small molecule drug products, such as ZTlido (which is held by our subsidiary, Scilex Holding), the Hatch-Waxman Act provides generic companies powerful incentives to seek to invalidate our pharmaceutical patents. As a result, we expect that our U.S. patents on major pharmaceutical products will be routinely challenged, and there can be no assurance that our patents will be upheld. We face generic manufacturer challenges to our patents outside the U.S. as well. In addition, competitors or other third parties may claim that our activities infringe patents or other intellectual property rights held by them. If successful, such claims

could result in our being unable to market a product in a particular territory or being required to pay damages for past infringement or royalties on future sales.

If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Our success also depends upon the skills, knowledge and experience of our scientific and technical personnel and our consultants and advisors, as well as our licensors. To help protect our proprietary know-how and our inventions for which patents may be unobtainable or difficult to obtain, or prior to seeking patent protection, we rely on trade secret protection and confidentiality agreements. Unlike some of our competitors, in addition to certain manufacturing processes, we maintain our proprietary libraries for ourselves as trade secrets. To this end, we require all our employees, consultants, advisors and contractors to enter into agreements which prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information. If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer. Moreover, our third-party licensing partners may retain rights in some of our proprietary or joint trade secrets, know-how, patented inventions or other proprietary information, including rights to sublicense and rights of publication, which may adversely impact our ability to obtain patents and protect trade secrets, know-how or other proprietary information. In addition, the U.S. government may retain rights in some of our patents or other proprietary information.

Third party competitors may seek to challenge the validity of our patents, thereby rendering them unenforceable or we may seek to challenge third party competitor patents if such third parties seek to interpret or enforce a claim scope going well beyond the actual enabled invention.

In addition, many of the formulations used and processes developed by us in manufacturing any of our collaborators' products are subject to trade secret protection, patents or other intellectual property protections owned or licensed by such collaborator. While we make significant efforts to protect our collaborators' proprietary and confidential information, including requiring our employees to enter into agreements protecting such information, if any of our employees breaches the non-disclosure provisions in such agreements, or if our collaborators make claims that their proprietary information has been disclosed, our reputation may suffer damage and we may become subject to legal proceedings that could require us to incur significant expenses and divert our management's time, attention and resources.

Claims that we infringe upon the rights of third parties may give rise to costly and lengthy litigation, and we could be prevented from selling products, forced to pay damages, and defend against litigation.

Third parties may assert patent or other intellectual property infringement claims against us or our strategic partners or licensees with respect to our technologies and product candidates or potential product candidates. If our products, methods, processes and other technologies infringe upon the proprietary rights of other parties, we could incur substantial costs and we may have to:

- obtain licenses, which may not be available on commercially reasonable terms, if at all, and may be non-exclusive, thereby giving our competitors access to the same intellectual property licensed to us;
- redesign our products or processes to avoid infringement;
- stop using the subject matter validly claimed in the patents held by others;
- pay damages; and
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our valuable management resources.

Even if we were to prevail, any litigation could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. Furthermore, as a result of a patent infringement suit brought against us or our strategic partners or licensees, we or our strategic partners or licensees may be forced to stop or delay developing, manufacturing or selling technologies, product candidates or potential products that are claimed to infringe a third party's intellectual property unless that party grants us or our strategic partners' or licensees' rights to use its intellectual property. Ultimately, we may be unable to develop some of our technologies or potential products or may have to discontinue development of a product candidate or cease some of our business operations as a result of patent infringement claims, which could severely harm our business.

In addition, our collaborators' products may be subject to claims of intellectual property infringement and such claims could materially affect our CMO business if their products cease to be manufactured and they have to discontinue the use of the infringing technology which we may provide. Any of the foregoing could affect our ability to compete or could have a material adverse effect on our business, financial condition and results of operations.

Our position as a relatively small company may cause us to be at a significant disadvantage in defending our intellectual property rights and in defending against infringement claims by third parties.

Litigation relating to the ownership and use of intellectual property is expensive, and our position as a relatively small company in an industry dominated by very large companies may cause us to be at a significant disadvantage in defending our intellectual property rights and in defending against claims that our technology infringes or misappropriates third party intellectual property rights. However, we may seek to use various post-grant administrative proceedings, including new procedures created under the America Invents Act, to invalidate potentially overly-broad third party rights. Even if we can defend our position, the cost of doing so may adversely affect our ability to grow, generate revenue or become profitable. In the course of the ongoing litigation or any future additional litigation to which we may be subject, we may not be able to protect our intellectual property at a reasonable cost, or at all. The outcome of litigation is always uncertain, and in some cases could include judgments against us that require us to pay damages, enjoin us from certain activities or otherwise affect our legal, contractual or intellectual property rights, which could have a significant adverse effect on our business.

Third-party claims of intellectual property infringement may prevent or delay our drug discovery and development efforts.

Our commercial success depends in part on our avoiding infringement of the patents and proprietary rights of third parties.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including PTO administrative proceedings, such as inter partes reviews, and reexamination proceedings before the PTO or oppositions and revocations and other comparable proceedings in foreign jurisdictions. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing product candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidates may give rise to claims of infringement of the patent rights of others.

Despite safe harbor provisions, third parties may assert that we are employing their proprietary technology without authorization. There may be third-party patents, of which we are currently unaware, with claims to materials, formulations, methods of doing research or library screening, methods of manufacture or methods for treatment related to the use or manufacture of our product candidates. Because patent applications can take many years to issue, there may be currently pending patent published applications which may later result in issued patents that our product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtain a license under the applicable patents, or until such patents expire or they are finally determined to be held invalid or unenforceable. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy or patient selection methods, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtain a license, limit our uses, or until such patent expires or is finally determined to be held invalid or unenforceable. In either case, such a license may not be available on commercially reasonable terms or at all.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties, cease marketing our products or developing our product candidates, limit our uses, pay royalties or redesign our infringing product candidates, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on all of our product candidates throughout the world would be prohibitively expensive. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the U.S. These products may compete with our products in jurisdictions where we do not have any issued patents and our patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial cost and divert our efforts and attention from other aspects of our business.

Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.

Because we operate in the highly technical field of research and development of biologics and small molecule drugs, we rely in part on trade secret protection in order to protect our proprietary trade secrets and unpatented know-how. However, trade secrets are difficult to protect, and we cannot be certain that others will not develop the same or similar technologies on their own. We have taken steps, including entering into confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors, to protect our trade secrets and unpatented know-how. These agreements generally require that the other party keep confidential and not disclose to third parties all confidential information developed by the party or made known to the party by us during the party's relationship with us. We also typically obtain agreements from these parties which provide that inventions conceived by the party in the course of rendering services to us will be our exclusive property. However, these agreements may not be honored and may not effectively assign intellectual property rights to us. Enforcing a claim that a party illegally obtained and is using our trade secrets or know-how is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. may be less willing to protect trade secrets or know-how. The failure to obtain or maintain trade secret protection could adversely affect our competitive position.

If we breach any of the agreements under which we license commercialization rights to our product candidates from third parties, we could lose license rights that are important to our business.

We license the use, development and commercialization rights for all of our product candidates and may enter into similar licenses in the future. Under each of our existing license agreements we are subject to commercialization and development, diligence obligations, milestone payment obligations, royalty payments and other obligations. If we fail to comply with any of these obligations or otherwise breach our license agreements, our licensing partners may have the right to terminate the license in whole or in part.

For example, certain of our joint development and/or licensing agreements, including but not limited to our agreement with City of Hope, set forth diligence milestones including timelines in which certain clinical trials should be initiated. Due to the uncertainty of drug development and clinical trials as set forth above, we may not be able to meet these diligence milestones, which could result in loss of exclusivity or loss of our rights to develop certain products or services pursuant to those agreements.

Generally, the loss of any one of our current licenses or other licenses in the future could materially harm our business, prospects, financial condition and results of operations.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage.

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

- Others may be able to make compounds that are similar to our product candidates but that are not covered by the claims of the patents that we own or have exclusively licensed;

- We or our licensors or strategic partners might not have been the first to make the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- We or our licensors or strategic partners might not have been the first to file patent applications covering certain of our inventions;
- Others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- Our pending patent applications may not lead to issued patents;
- Issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- Our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- We may not develop additional proprietary technologies that are patentable; and
- The patents of others may have an adverse effect on our business.

Should any of these events occur, they could significantly harm our business, results of operations and prospects.

From time to time we may need to license patents, intellectual property and proprietary technologies from third parties, which may be difficult or expensive to obtain.

We may need to obtain licenses to patents and other proprietary rights held by third parties to successfully develop, manufacture and market our drug products. As an example, it may be necessary to use a third party's proprietary technology to reformulate one of our drug products in order to improve upon the capabilities of the drug product. If we are unable to timely obtain these licenses on reasonable terms, our ability to commercially exploit our drug products may be inhibited or prevented.

We remain responsible for payments of all milestone and license fees to Samyang Biopharmaceuticals Corporation pursuant to our agreement with NantPharma.

As a result of our acquisition of IgDraSol, Inc. in September 2013, we became a party to an Exclusive Distribution Agreement, as amended, with Samyang Biopharmaceuticals Corporation ("Samyang") in connection with our development of Cynviloq™ which contained various milestone and license fees to be paid to Samyang. On May 14, 2015, we sold all our equity interests in IgDrasol, Inc. to NantPharma, LLC ("NantPharma"). As part of the sale, we agreed with NantPharma to be responsible for and pay all milestone and license fees required to be paid to Samyang under the Exclusive Distribution Agreement following notification from NantPharma when such milestone and license fees become due and payable. If such milestone or licenses fees become due and payable, the payment thereof could materially harm our business and financial condition.

Risks Related to Ownership of Our Common Stock

The market price of our common stock may fluctuate significantly, and investors in our common stock may lose all or a part of their investment.

The market prices for securities of biotechnology and pharmaceutical companies have historically been highly volatile, and the market has from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. For example, from January 2, 2019 to December 31, 2019, our closing stock price ranged from $1.45 to $5.94 per share. The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- actual or anticipated adverse results or delays in our clinical trials;
- our failure to commercialize our product candidates, if approved;
- unanticipated serious safety concerns related to the use of any of our product candidates;
- adverse regulatory decisions;
- changes in laws or regulations applicable to our product candidates, including but not limited to clinical trial requirements for approvals;
- legal disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our product candidates, government investigations and the results of any proceedings or lawsuits, including, but not limited to, patent or stockholder litigation;
- our decision to initiate a clinical trial, not initiate a clinical trial or to terminate an existing clinical trial;
- our dependence on third parties, including CROs;
- announcements of the introduction of new products by our competitors;

- market conditions in the pharmaceutical and biotechnology sectors;
- announcements concerning product development results or intellectual property rights of others;
- future issuances of common stock or other securities;
- the addition or departure of key personnel;
- failure to meet or exceed any financial guidance or expectations regarding development milestones that we may provide to the public;
- actual or anticipated variations in quarterly operating results;
- our failure to meet or exceed the estimates and projections of the investment community;
- overall performance of the equity markets and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- introduction of new products offered by us or our competitors;
- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- issuances of debt or equity securities;
- sales of our common stock by us or our stockholders in the future;
- trading volume of our common stock;
- ineffectiveness of our internal controls;
- publication of research reports about us or our industry or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- failure to effectively integrate the acquired companies' operations;
- general political and economic conditions;
- effects of natural or man-made catastrophic events;
- effects of public health crises, pandemics and epidemics, such as the COVID-19 coronavirus; and
- other events or factors, many of which are beyond our control.

Further, the equity markets in general have recently experienced extreme price and volume fluctuations. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock. Price volatility of our common stock might worsen if the trading volume of our common stock is low. The realization of any of the above risks or any of a broad range of other risks, including those described in these "Risk Factors," could have a dramatic and material adverse impact on the market price of our common stock.

We have not paid cash dividends in the past and do not expect to pay cash dividends in the foreseeable future. Any return on investment may be limited to the value of our common stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The Loan Agreement prohibits us from paying any dividends without the prior written consent of the Lenders. The payment of dividends on our capital stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if the common stock price appreciates.

Our strategic investments may result in losses.

We periodically make strategic investments in various public and private companies with businesses or technologies that may complement our business. The market values of these strategic investments may fluctuate due to market conditions and other conditions over which we have no control. Other-than-temporary declines in the market price and valuations of the securities that we hold in other companies would require us to record losses related to our investment. This could result in future charges to our earnings. It is uncertain whether or not we will realize any long-term benefits associated with these strategic investments.

A sale of a substantial number of shares of the common stock may cause the price of our common stock to decline.

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, substantial amounts of our common stock in the public market, including shares issued in connection with the exercise of outstanding options or warrants, the market price of our common stock could fall. Sales of a substantial number of shares of our common stock may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem

reasonable or appropriate. We may become involved in securities class action litigation that could divert management's attention and harm our business.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of biotechnology and biopharmaceutical companies. These broad market fluctuations may cause the market price of our common stock to decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of our securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- the addition or termination of clinical trials;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our product candidates; and
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially.

Existing stockholders' interest in us may be diluted by additional issuances of equity securities and raising funds through acquisitions, lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights.

We may issue additional equity securities to fund future expansion and pursuant to equity incentive or employee benefit plans. We may also issue additional equity for other purposes. These securities may have the same rights as our common stock or, alternatively, may have dividend, liquidation or other preferences to our common stock. The issuance of additional equity securities will dilute the holdings of existing stockholders and may reduce the share price of our common stock.

If we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates, potential products or proprietary technologies, or grant licenses on terms that may not be favorable to us. If adequate funds are not available, our ability to achieve profitability or to respond to competitive pressures would be significantly limited and we may be required to delay, significantly curtail or eliminate the development of our product candidates.

Our directors and executive officers own a significant percentage of our capital stock, and they may make decisions that you do not consider to be in your best interests or those of our other stockholders.

As of December 31, 2019, our directors and executive officers beneficially owned, in the aggregate, approximately 4.2% of our outstanding voting securities. As a result, if some or all of them acted together, they would have the ability to exert significant influence over the election of our board of directors and the outcome of issues requiring approval by our stockholders. This concentration of ownership may also have the effect of delaying or preventing a change in control of our company that may be favored by other stockholders. This could prevent transactions in which stockholders might otherwise recover a premium for their shares over current market prices.

Our certificate of incorporation, as amended, and bylaws provide for indemnification of officers and directors at our expense and limits their liability, which may result in a major cost to us and hurt the interests of our stockholders because corporate resources may be expended for the benefit of our officers and/or directors.

Our certificate of incorporation, as amended, bylaws and applicable Delaware law provide for the indemnification of our directors, officers, employees, and agents, under certain circumstances, against attorney's fees and other expenses incurred by them in any litigation to which they become a party arising from their association with or activities on our behalf. We will also bear the expenses of such litigation for any of our directors, officers, employees, or agents, upon such person's promise to repay

us, therefore if it is ultimately determined that any such person shall not have been entitled to indemnification. This indemnification policy could result in substantial expenditures by us, which we will be unable to recover.

Our corporate documents and Delaware law contain provisions that could discourage, delay or prevent a change in control of our company, prevent attempts to replace or remove current management and reduce the market price of our common stock.

Provisions in our certificate of incorporation, as amended, and bylaws may discourage, delay or prevent a merger or acquisition involving us that our stockholders may consider favorable. For example, our certificate of incorporation, as amended, authorizes our board of directors to issue up to 100,000,000 shares of "blank check" preferred stock. As a result, without further stockholder approval, the board of directors has the authority to attach special rights, including voting and dividend rights, to this preferred stock. With these rights, preferred stockholders could make it more difficult for a third party to acquire us.

We are also subject to the anti-takeover provisions of the General Corporation Law of the State of Delaware. Under these provisions, if anyone becomes an "interested stockholder," we may not enter into a "business combination" with that person for three years without special approval, which could discourage a third party from making a takeover offer and could delay or prevent a change in control of us. An "interested stockholder" means, generally, someone owning 15% or more of our outstanding voting stock or an affiliate of ours that owned 15% or more of our outstanding voting stock within the past three years, subject to certain exceptions as described in the General Corporation Law of the State of Delaware.

Our Amended and Restated Bylaws provide that the Court of Chancery in the State of Delaware is the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our Amended and Restated Bylaws (our "Bylaws"), provide that, unless our Board of Directors consents to an alternative forum, the Court of Chancery in the State of Delaware will be the sole and exclusive forum for: (i) any derivative action or proceeding brought by or on our behalf; (ii) any direct action asserting a claim against us or any of our directors or officers pursuant to any of the provisions of the General Corporation Law of the State of Delaware, our Restated Certificate of Incorporation or our Bylaws; (iii) any action asserting a claim of breach of fiduciary duties owed by any of our directors, officers or other employees to our stockholders; or (iv) any action asserting a violation of Delaware decisional law relating to our internal affairs. This provision does not apply to (a) actions in which the Court of Chancery in the State of Delaware concludes that an indispensable party is not subject to the jurisdiction of Delaware courts, or (b) actions in which a federal court has assumed exclusive jurisdiction to a proceeding. This choice of forum provision is not intended to apply to any actions brought under the Securities Act of 1933, as amended, or the Securities Act, or the Securities Exchange Act of 1934, as amended, or the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. However, our Bylaws do not relieve us of our duties to comply with federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations. Our Bylaws also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and consented to this choice of forum provision.

This choice of forum provision in our Bylaws may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. In addition, stockholders who do bring a claim in the Court of Chancery in the State of Delaware could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. Furthermore, the enforceability of similar choice of forum provisions in other companies' governing documents has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. If a court were to find the choice of forum provision in our Bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business and financial condition.

Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.

There have been changing laws, regulations and standards relating to corporate governance and public disclosure, including the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), new regulations promulgated by the U.S. Securities and Exchange Commission (the "SEC") and rules promulgated by the national securities exchanges. The Dodd-Frank Act, enacted in July 2010, expanded federal regulation of corporate governance matters and imposes requirements on public companies to, among other things, provides stockholders with a periodic advisory vote on executive compensation and also adds compensation committee reforms and enhanced pay-for-performance disclosures. While some provisions of the Dodd-Frank Act were effective upon enactment, others have been and will be implemented upon the SEC's adoption of related rules and regulations. The scope and timing of the adoption of such rules and regulations is uncertain and, accordingly, the cost of compliance with the Dodd-Frank Act is also uncertain. Additionally, while campaigning, President Trump made statements suggesting he may seek to adopt legislation that could significantly affect the regulation of United States financial markets. Areas subject to potential change, amendment or repeal include the Dodd-Frank Act, including § 619 (12 U.S.C. § 1851) known as the Volcker Rule and various swaps and derivatives regulations, the authority of the Federal Reserve and the Financial Stability Oversight Council, and renewed proposals to separate banks' commercial and investment banking activities.

These new or changed laws, regulations and standards are, or will be, subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. Members of our board of directors and our principal executive officer and principal financial officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified directors and executive officers, which could harm our business. If the actions we take in our efforts to comply with new or changed laws, regulations and standards differ from the actions intended by regulatory or governing bodies, we could be subject to liability under applicable laws or our reputation may be harmed.

If we fail to properly manage our internal control over financial reporting on a go forward basis, material weaknesses in our internal control over financial reporting could be identified that could, if not remediated, result in a material misstatement in our financial statements and could adversely affect our future results of operations, our stock price, and our ability to raise capital.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. Although we have remediated the material weaknesses that we previously identified in connection with the audit of our consolidated financial statements as of and for the year ended December 31, 2018 by implementing and enhancing our control procedures, in order to properly manage our internal control over financial reporting, we may need to take additional measures, and we cannot be certain that the measures we have taken, and expect to take, to improve our internal controls will be sufficient to ensure that our internal controls will remain effective and eliminate the possibility that other material weaknesses or deficiencies may develop or be identified in the future. If we experience future material weaknesses or deficiencies in internal controls and we are unable to correct them in a timely manner, our ability to record, process, summarize and report financial information accurately and within the time periods specified in the rules and forms of the SEC, will be adversely affected. Any such failure could negatively affect the market price and trading liquidity of our common stock, lead to delisting, cause investors to lose confidence in our reported financial information, subject us to civil and criminal investigations and penalties, and generally materially and adversely impact our business and financial condition.

Our recent rejections of unsolicited offers to acquire our company or shares of our company could create volatility in and depress our stock price, as well as discourage future offers involving our company.

On November 25, 2019, we issued a press release announcing that our board of directors unanimously rejected an unsolicited, non-binding term sheet proposal to acquire our company for between $3.00 to $5.00 cash. On January 10, 2020, we announced that on January 9, 2020, we received a non-binding proposal from a private equity fund to acquire a majority or all of our issued and outstanding shares for up to $7.00 per share. On January 27, 2020, we announced that, after reviewing the acquisition proposal from the private equity fund in consultation with its advisors, our board of directors determined that the offer significantly undervalues our company and is not in the best interest of our stockholders and our board of directors unanimously rejected the acquisition proposal. While we have rejected both offers, we believe that the future trading price of our common stock is likely to be volatile and could be subject to wide price fluctuations based on many factors, including uncertainty associated with any subsequent unsolicited offers. In addition, if the market perceives that a transaction may occur

at a price less than the current trading price or less than the prices offered, the price per share of our common stock could decrease, including back to preannouncement levels or even lower. Moreover, our recent rejections of these offers may discourage, delay or prevent third parties from acquiring our company or otherwise proposing transactions involving us that our stockholders may consider favorable.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

The following table sets forth our principal properties as of December 31, 2019, all of which are leased:

Location	Lease term	Square footage	Primary use
Sorrento Therapeutics segment			
San Diego, CA	2029 - option to extend for one additional 5-year period	77,000	Principal executive offices, research and development
San Diego, CA[(1)]	2029 - option to extend for one additional 5-year period	61,000	Administrative
San Diego, CA	2029 - option to extend for one additional 5-year period	43,000	Research and development
San Diego, CA	2029 - option to extend for one additional 5-year period	36,000	Contract manufacturing
San Diego, CA	2020	11,000	Research and development
Suzhou, China	2022	50,000	Contract manufacturing, research and development
Scilex segment			
Palo Alto, CA	2024 - option to extend for one additional 3-year period	6,000	Administrative

(1) This facility is utilized by both the Sorrento Therapeutics and Scilex segments.

Item 3. Legal Proceedings.

To the best of our knowledge, we are not currently a party to any legal proceedings that, individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

In the normal course of business, we may be named as a defendant in one or more lawsuits. Other than as set forth below, we are not a party to any outstanding material litigation and management is currently not aware of any legal proceedings that, individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

On April 3, 2019, we filed two legal actions against, among others, Patrick Soon-Shiong and entities controlled by him, asserting claims for, among other things, fraud and breach of contract, arising out of Dr. Soon-Shiong's purchase of the drug Cynviloq™ from us in May 2015. The actions allege that Dr. Soon-Shiong and the other defendants, among other things, acquired the drug Cynviloq™ for the purpose of halting its progression to the market. Specifically, we have filed:

- An arbitration demand with the American Arbitration Association in Los Angeles, California against NantPharma, LLC and Chief Executive Officer Patrick Soon-Shiong, seeking damages in excess of $1.0 billion, as well as additional punitive damages, related to alleged fraud and breaches of the Stock Sale and Purchase Agreement, dated May 14, 2015, entered into between NantPharma, LLC and us, filed as Exhibit 10.9 to this Annual Report on Form 10-K. On May 24, 2019, NantCell, Inc., Dr. Soon-Shiong and Immunotherapy NANTibody LLC ("NANTibody") General Counsel Charles Kim filed a motion in the Los Angeles Superior Court to stay or dismiss our arbitration demand. On October 9, 2019, the Los Angeles Superior Court denied the motion to stay or dismiss the arbitration demand, and the arbitration is ongoing; and

- An action in the Los Angeles Superior Court derivatively on behalf of NANTibody against NantCell, Inc., NANTibody Board Member and NantCell, Inc. Chief Executive Officer Patrick Soon-Shiong, and NANTibody officer Charles Kim, related to several breaches of the June 11, 2015 Limited Liability Company Agreement for NANTibody entered into between us and NantCell, Inc. The suit also alleges breaches of fiduciary duties and seeks, inter alia, a declaration that the Assignment Agreement entered into on July 2, 2017, between NantPharma, LLC and NANTibody is void and an equitable unwinding of the Assignment Agreement. The suit calls for the restoration of $90.05 million to the NANTibody capital account, thereby restoring our equity method investment in NANTibody to its invested amount as of June 30, 2017 of $40.0 million. On May 24, 2019, NantCell, Inc. and Dr. Soon-Shiong filed a cross-complaint against us and Dr. Ji, seeking unspecified damages, as well as additional punitive damages and specific performance, related to alleged fraud, alleged breaches of the Exclusive License Agreement for certain antibodies (dated April 21, 2015 and entered into between NantCell, Inc. and us), and tortious interference with contract. On May 24, 2019, NANTibody and NantPharma, LLC filed a new complaint in the action against us and Dr. Ji, seeking unspecified damages, as well as additional punitive damages and specific performance, related to alleged fraud, alleged breaches of the Stock Sale and Purchase Agreement, alleged breaches of the Exclusive License Agreement for certain antibodies (dated April 21, 2015 and entered into between NantCell, Inc. and us), and tortious interference with contract. On July 8, 2019, we and Dr. Ji filed motions to compel the cross-complaint and new action to arbitration. On October 9, 2019, the Los Angeles Superior Court granted the motions to compel to arbitration all of the claims brought by NANTibody, NantCell, Inc. and NantPharma, LLC, and denied the motions to compel as to the claims brought by Dr. Soon-Shiong. Subsequently, NANTibody, NantCell, Inc., and NantPharma, LLC have re-filed their claims in arbitration. The claims against Dr. Soon-Shiong have been stayed pending resolution of the claims filed in arbitration. The original derivative action is no longer stayed, and the parties are currently engaged in discovery in the suit.

Item 4. Mine Safety Disclosures.

None.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

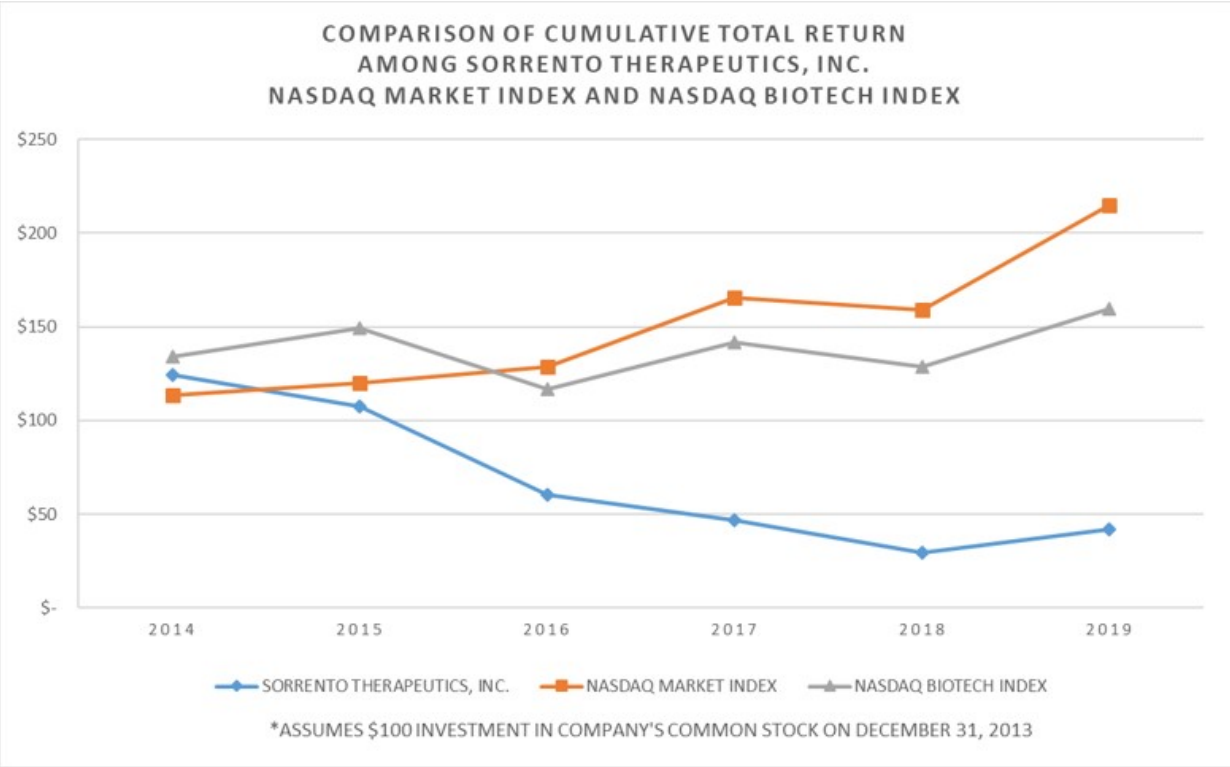
Our common stock is listed on the Nasdaq Capital Market under the symbol “SRNE”.

Holders of Record

As of February 14, 2020, there were 213 holders of record of our common stock.

Performance Graph

The following graph compares the cumulative total stockholder return on our common stock from December 31, 2013 to December 31, 2019 with the cumulative total return of (i) the Nasdaq Market Index and (ii) the Nasdaq Biotechnology Index. This graph assumes the investment of $100.00 after the market closed on December 31, 2013 in our common stock, and in the Nasdaq Market Index and the Nasdaq Biotechnology Index, and it assumes any dividends are reinvested. The stock price performance included in this graph is not necessarily indicative of future stock price performance.



Item 6. Selected Financial Data.

The selected consolidated financial data set forth in the table below has been derived from our audited financial statements. The data set forth below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our audited financial statements and accompanying notes appearing elsewhere in this Annual Report on Form 10-K.

(In thousands, except per share data)	Year Ended December 31,				
Income Statement Data:	**2019**	**2018**	**2017**	**2016**	**2015**
Revenues:					
Net product revenues	$ 21,974	$ 5,873	$ 553	$ 880	$ —
Service revenues [1]	9,458	15,320	151,303	7,272	4,590
Total revenues [2]	31,432	21,193	151,856	8,152	4,590
Income (Loss) from operations	$ (259,393)	$ (150,425)	$ 25,335	$ (96,777)	$ (74,005)
Net income (loss)	$ (363,012)	$ (212,526)	$ 11,109	$ (63,937)	$ (50,074)
Net income (loss) per share - basic	$ (2.20)	$ (1.92)	$ 0.13	$ (1.21)	$ (1.24)
Net income (loss) per share - diluted	$ (2.35)	$ (1.92)	$ 0.13	$ (1.21)	$ (1.24)
Weighted average number of shares outstanding during the period - basic	132,732	106,150	69,742	50,360	36,909
Weighted average number of shares outstanding during the period - diluted	140,514	106,150	70,381	50,360	36,909

[1] Year-over-year increase in 2017 is primarily due to revenue recognized from the intangible assets transferred to Celularity as a result of closing the Contribution Agreement with Celularity, pursuant to which, among other things, we contributed certain intellectual property rights related to our proprietary CAR constructs and related CARs to Celularity in exchange for shares of Celularity's Series A Preferred Stock.

[(2)]Amounts for 2017, 2016 and 2015 have not been recast after adoption of Accounting Standards Codification Topic 606 *Revenue from Contracts with Customers* (“ASC 606”).

(In thousands)	As of December 31,				
Balance Sheet Data:	**2019**	**2018**	**2017**	**2016**	**2015**
Cash and cash equivalents	$ 22,521	$ 158,738	$ 20,429	$ 82,398	$ 39,038
Intangibles, net	63,308	66,283	71,013	64,776	3,912
Goodwill	38,298	38,298	38,298	41,548	20,626
Total assets	557,632	624,087	431,613	401,586	343,519
Total liabilities	524,876	416,587	225,003	315,084	202,581
Stockholders' equity	32,756	207,500	206,610	86,502	140,938
Net Working Capital	(47,618)	117,943	(49,225)	13,569	110,145

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 in conjunction with the financial statements and the related notes and other information that are included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives, expectations and intentions. Actual results and the timing of events could differ materially from those anticipated in these forward-looking statements as a result of a number of factors, including those set forth under the cautionary note regarding “Forward-Looking Statements” contained elsewhere in this Annual Report on Form 10-K. Additionally, you should read the “Risk Factors” section of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a clinical stage and commercial biopharma company focused on delivering innovative and clinically meaningful therapies to patients and their families to address unmet medical needs. We also have programs assessing the use of our technologies and products in autoimmune, inflammatory and neurodegenerative diseases.

At our core, we are an antibody-centric company and leverage our proprietary G-MAB™ library and targeted delivery modalities to generate the next generation of cancer therapeutics. Our fully human antibodies include PD-1, PD-L1, CD38, CD123, CD47, CTLA-4, c-MET, VEGFR2, CCR2 and CD137 among others.

Our vision is to leverage these antibodies in conjunction with proprietary targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary chimeric antigen receptor T-cell therapy (“CAR-T”), dimeric antigen receptor T-cell therapy (“DAR-T”), antibody drug conjugates (“ADCs”) as well as bispecific antibody approaches. We acquired Sofusa®, a revolutionary drug delivery technology, in July 2018, which delivers biologics directly into the lymphatic system to potentially achieve improved efficacy and fewer adverse effects than standard parenteral immunotherapy. Additionally, our majority owned subsidiary, Scilex Holding Company (“Scilex Holding”), acquired the assets of Semnur Pharmaceuticals, Inc. (“Semnur”) in March 2019. Semnur’s SEMDEXA™ (SP-102) compound has the potential to become the first FDA-approved epidural steroid product for the treatment of sciatica.

With each of our clinical and pre-clinical programs, we aim to tailor our therapies to treat specific stages in the evolution of cancer, from elimination, to equilibrium and escape. In addition, our objective is to focus on tumors that are resistant to current treatments and where we can design focused trials based on a genetic signature or biomarker to ensure patients have the best chance of a durable and significant response. We have several immuno-oncology programs that are in or near to entering the clinic. These include cellular therapies, an oncolytic virus and a palliative care program targeted to treat intractable cancer pain. Our cellular therapy programs focus on CAR-T for adoptive cellular immunotherapy to treat both solid and liquid tumors. We have reported early data from Phase I trials of our carcinoembryonic antigen (“CEA”)-directed CAR-T program. We have treated five patients with stage 4, unresectable adenocarcinoma (four with pancreatic and one with colorectal cancer) and CEA-positive liver metastases with anti-CEA CAR-T. We successfully submitted an Investigational New Drug application ("IND") for anti-CD38 CAR-T for the treatment of refractory or relapsed multiple myeloma ("RRMM") and obtained approval from the

U.S. Food and Drug Administration (the "FDA") to commence a human clinical trial for this indication in early 2018. We have dosed five patients and are continuing the enrollment of additional patients.

Broadly speaking, we believe we are one of the world's leading CAR-T and DAR-T companies today due to our investments in technology and infrastructure, which have enabled significant progress in developing our next-generation non-viral, "off-the-shelf" allogeneic DAR-T solutions. With "off-the-shelf" solutions, DAR-T therapy can truly become a drug product rather than a treatment procedure. One of the approaches we have taken to develop the "off-the-shelf" allogeneic CAR-T solutions is through Celularity, Inc., our joint venture with Celgene, United Therapeutics and others, or Celularity. Celularity focuses on developing cell therapies with placenta-derived and cord blood T cells, which have natural allogeneic "off-the-shelf" characteristics.

Outside of immune-oncology programs, as part of our global aim to provide a wide range of therapeutic products to meet underserved markets, we have made investments in non-opioid pain management. These include resiniferatoxin ("RTX"), which is a non-opioid-based toxin that specifically ablates nerves that conduct chronic and inflammatory pain signals while leaving other nerve functions intact and is being studied for chronic pain treatment. RTX has been granted orphan drug status for the treatment of intractable pain with end-stage cancer and two Phase I trials (intrathecal and epidural routes) in that indication are concluding. A Phase Ib trial studying tolerance and efficacy of RTX for the control of osteoarthritis knee pain was initiated in late 2018 and intermediate results have shown efficacy with no dose limiting toxicities. The osteoarthritis trial enrolled the last patient in the first quarter of 2020. Clinical data is expected to be available soon after the last patient enrolled completes the day 84 visit (end-point) at the end of April 2020. Knee arthritis registrational trials are planned to start later in the first half of 2020 with an Australia/USA Phase III trial, pending meeting with the FDA and receiving clearance to proceed.

In this area, we have in-house developed and acquired proprietary technologies to responsibly develop next generation, branded pharmaceutical products to better manage patients' medical conditions and maximize the quality of life of patients and healthcare providers. The flagship product of our majority-owned subsidiary, Scilex Pharmaceuticals Inc. ("Scilex Pharma"), ZTlido® (lidocaine topical system 1.8%) ("ZTlido"), is a next-generation lidocaine delivery system which was approved by the FDA for the treatment of postherpetic neuralgia, a severe neuropathic pain condition, in February 2018, and was commercially launched in late October 2018. Scilex Pharma has now built a full commercial organization, which includes sales, marketing, market access, and medical affairs. ZTlido has demonstrated superior adhesion in comparative head-to-head studies as compared to Lidoderm and is manufactured by our Japanese partner in their state-of-the-art manufacturing facility.

Results of Operations

The following discussion of our operating results explains material changes in our results of operations for the years ended December 31, 2019 and 2018. The discussion should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

We have reclassified historically presented revenue and cost of revenue to conform to the current period presentation. Further, we re-segmented our business into two new operating segments effective January 1, 2019. The reclassification had no impact on previously reported results of operations or financial position.

Comparison of the Years Ended December 31, 2019 and 2018

Revenues. Revenues were $31.4 million for the year ended December 31, 2019, as compared to $21.2 million for the year ended December 31, 2018.

Revenue in our Sorrento Therapeutics segment decreased from $18.6 million to $10.4 million for the year ended December 31, 2019, compared to the prior year. The decrease of $8.2 million is primarily attributable to lower contract manufacturing service revenues and lower revenues from the sale of materials associated with our research and development arrangements.

Revenue in our Scilex segment increased from $2.6 million to $21.0 million for the year ended December 31, 2019, compared to the prior year, as sales of ZTlido did not commence until October 2018 following the receipt of commercial approval in February 2018.

Cost of revenues. Cost of revenues for the years ended December 31, 2019 and 2018 were $12.2 million and $7.1 million, respectively, and relate to product sales, the sale of customized reagents and providing contract manufacturing services. The costs generally include employee-related expenses, including salary and benefits, direct materials and overhead costs including rent, depreciation, utilities, facility maintenance and insurance.

Cost of revenues for our Sorrento Therapeutics segment decreased by $0.4 million and is primarily attributable to lower revenues, partially offset by higher direct materials and overhead costs as compared to the prior year.

Cost of revenues for our Scilex segment increased by $5.6 million as compared to the prior year as sales of ZTlido did not commence until October 2018 and a write-down of inventory of $3.5 million based on our assessment of sales trends and expiration dates for on-hand inventory.

Research and development expenses. Research and development expenses for the years ended December 31, 2019 and 2018 were $106.9 million and $77.0 million, respectively. Research and development expenses include expenses associated with the ramp up of ZTlido, SP-102 as well as the costs related to our RTX program activities towards entering into future clinical trials, costs to identify, isolate and advance human antibody drug candidates derived from our libraries as well as advancing our ADC preclinical drug candidates and preclinical testing expenses. Such expenses consist primarily of salaries and personnel-related expenses, stock-based compensation expense, clinical development expenses, preclinical testing, lab supplies, consulting costs, depreciation and other expenses.

Research and development expense for our Sorrento Therapeutics segment increased by $23.6 million as compared to the prior fiscal year and was primarily attributed to increased clinical activities related to consulting and lab supply costs incurred in connection with our expanded research and development activities and activities to advance RTX and CAR-T into clinical trials.

Research and development expense for our Scilex segment increased by $6.3 million as compared to the prior fiscal year and was primarily driven by $7.4 million in costs associated with our product pipeline. The increase was partially offset by lower clinical trial costs associated with ZTlido, which obtained FDA approval in February 2018.

We expect research and development expenses for both segments to increase as we: (i) advance RTX and our other product candidates into clinical trials and pursue other development, acquire, develop and manufacture clinical trial materials and increase other regulatory operating activities, (ii) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (iii) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (iv) incur higher salary, lab supply and infrastructure costs in connection with supporting all of our programs, (v) invest in our joint ventures, collaborations or other third party agreements, and (vi) expand our corporate infrastructure.

Acquired in-process research and development expenses. Acquired in-process research and development expenses for the year ended December 31, 2019 was $75.3 million and were incurred due to acquired in-process research and development expenses associated with the acquisition of Semnur in March 2019. We recognized $11.3 million of expenses related to acquired in-process research and development primarily associated with the Sofusa Purchase Agreement for the year ended December 31, 2018.

Selling, general and administrative expenses. General and administrative expenses for the years ended December 31, 2019 and 2018 were $103.6 million and $63.6 million, respectively. Selling, general and administrative expenses consist primarily of salaries and personnel-related expenses, stock-based compensation expense, professional fees, infrastructure expenses, legal and accounting expenses and other general corporate expenses.

Selling, general and administrative expense for our Sorrento Therapeutics segment increased by approximately $2.4 million as compared to the prior fiscal year and was primarily attributed to increased headcount and higher personnel-related expenses, stock-based compensation expense, professional fees, infrastructure expenses and other general corporate expenses.

Selling, general and administrative expense for our Scilex segment increased by approximately $37.6 million as compared to the prior fiscal year, and was primarily due to increased sales activities associated with the commercialization of ZTlido.

Intangible amortization. Intangible amortization for the years ended December 31, 2019 and 2018 was $3.9 million and $3.0 million, respectively.

Amortization expense for our Sorrento Therapeutics segment remained relatively consistent with the prior year.

Amortization expense for our Scilex segment increased by approximately $1.2 million as compared to the prior fiscal year, and was primarily due to the amortization of acquired in-process research and development upon commercialization of ZTlido that occurred in the fourth quarter of 2018.

(Loss) gain on derivative liabilities. Loss on derivative liabilities for the year ended December 31, 2019 was $36.8 million compared to a gain of $2.8 million for the year ended December 31, 2018.

Loss on derivative liabilities for our Sorrento Therapeutics segment totaled $13.5 million. We recorded a $7.4 million loss attributed to contingent put option related to the Scilex Notes pursuant to which the holders of the Scilex Notes could require us to repurchase Scilex Notes in certain circumstances. We recorded a $4.3 million loss related to the warrants to purchase shares of our common stock issued to certain funds and accounts managed by Oaktree Capital Management, L.P. (collectively, the "Lenders"). Additionally, we recorded a $1.8 million loss associated with the contingent acceleration feature of the Early Conditional Loan as further described in Notes 4 and 9 of the accompanying notes to the consolidated financial statements in this Annual Report on Form 10-K.

Loss on derivative liabilities for our Scilex segment was $23.3 million and was primarily attributed to revised probabilities related to timing of marketing approval for SP-103 and revised sales forecasts as further described in Notes 4 and 9 of the accompanying notes to the consolidated financial statements in this Annual Report on Form 10-K.

(Gain) loss on contingent liabilities and acquisition consideration payable. During the year ended December 31, 2019, we recorded a gain on contingent liabilities and acquisition consideration payable of approximately $11.1 million, which was comprised of $10.4 million attributed to the settlement of the acquisition consideration payable associated with the acquisition of Virttu Biologics Limited ("Virttu") and an additional $0.7 million due to changes in fair value of other contingent liabilities.

During the year ended December 31, 2018, we recorded a loss on contingent liabilities and acquisition consideration payable of approximately $9.6 million, which was primarily attributed to changes in the fair value of the acquisition consideration payable associated with the Scilex Pharma and Virttu acquisitions of $6.0 million and $6.4 million, respectively, and was partially offset by changes in fair value of our other contingent liabilities.

Interest expense. Interest expense for the years ended December 31, 2019 and 2018 was $36.1 million and $57.6 million, respectively. The decrease in the year ended December 31, 2019 resulted primarily from the conversion of the convertible notes issued in December 2017 that occurred in the second quarter of 2018, which resulted in approximately $44.3 million recognized as interest expense.

The decrease in interest expense compared to the prior year was partially offset by interest expense associated with the loan agreement entered into with the Lenders and Oaktree Fund Administration, LLC, as administrative and collateral agent (the "Agent"), and the Scilex Notes entered into in the second half of fiscal year 2018.

Loss on debt settlement / extinguishment. In March 2018, we entered into a Securities Purchase Agreement (the "March 2018 Securities Purchase Agreement") with certain accredited investors (the "March 2018 Purchasers"). Pursuant to the March 2018 Securities Purchase Agreement, we agreed to issue and sell to the March 2018 Purchasers, in a Private Placement (1) convertible promissory notes in an aggregate principal amount of $120,500,000 (the "Notes"), and (2) warrants to purchase 8,591,794 shares of our common stock (the "Warrants"). Loss on debt settlement / extinguishment for the year ended December 31, 2019 was approximately $27.8 million and was due to the conversion of the Notes associated with the March 2018 Securities Purchase Agreement as further described in Note 9 the accompanying notes to the consolidated financial statements in this Annual Report on Form 10-K. We recognized a loss on debt extinguishment / settlement of approximately $8.1 million as a result of the amended Warrants associated with the March 2018 Securities Purchase Agreement for the year ended December 31, 2018.

Income tax benefit. Income tax benefit for the year ended December 31, 2019 was $0.5 million. Income tax benefit for the year ended December 31, 2018 was $6.3 million. The decrease in income tax benefit was primarily attributed to the impact of our valuation allowance in 2019 compared to 2018.

Loss on equity method investments. Loss on equity investments for the year ended December 31, 2019 was $3.9 million compared to a loss on equity investments of $5.0 million for the year ended December 31, 2018. The decrease was primarily due to the recognition of our portion of the loss from operations from our investments (See Note 6 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K).

Net loss. Net loss for the year ended December 31, 2019 was $363.0 million as compared to a net loss of $212.5 million for 2018.

For a discussion regarding our financial condition and results of operations for the year ended December 31, 2018 as compared to the year ended December 31, 2017, please refer to the discussion under the heading "Results of Operations— Comparison of the Years Ended December 31, 2018 and 2017" in Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on March 15, 2019.

Liquidity and Capital Resources

As of December 31, 2019, we had $22.5 million in cash and cash equivalents attributable in part to the following financing arrangements:

Debt Financings

2018 Oaktree Term Loan Agreement

In November 2018, we and certain of our domestic subsidiaries (the "Guarantors") entered into a Term Loan Agreement (the "Loan Agreement") with the Lenders and the Agent, for an initial term loan of $100.0 million (the "Initial Loan") and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019, and the satisfaction of certain customary conditions (the "Conditional Loan"). The Initial Loan matures on November 7, 2023 (the "Maturity Date") and bears interest at a rate equal to the London Interbank Offered Rate ("LIBOR") plus the applicable margin, or 7%. The Initial Loan was funded on November 7, 2018. The net proceeds of the Initial Loan were approximately $91.3 million, after deducting estimated loan costs, commissions, fees and expenses.

In May 2019, we, the Guarantors and the Lenders and the Agent entered into an amendment (the "Amendment") to the Loan Agreement. Under the terms of the Amendment, among other things, the Lenders agreed to make available to us $20.0 million of the Conditional Loan notwithstanding that the commercial and financial milestones had not occurred (the "Early Conditional Loan") with a probable maturity of May 3, 2020 (absent the occurrence of certain qualifying events). The net proceeds of the Early Conditional Loan were approximately $18.9 million, after deducting estimated loan costs, commission, fees and expenses. The Lenders also agreed to loan us the remaining $30.0 million of the Conditional Loan upon the satisfaction of the commercial and financial milestones (the "Remaining Conditional Loan" and, together with the Initial Loan and the Early Conditional Loan, the "Term Loans"). The commercial and financial milestones were not achieve by November 7, 2019 and therefore were not loaned to us.

The Loan Agreement provided that, in the event of an optional prepayment of all or any portion of the Term Loans prior to November 7, 2021, we would be obligated to pay a prepayment fee in an amount equal to the amount of interest that would have been paid on the principal amount of the Term Loans being prepaid for the period from and including the date of such prepayment to, but excluding, November 7, 2021, based on the interest rate in effect on the date of any such prepayment (the "Make-Whole Payment"), plus 3% of the principal amount of the Term Loans being so prepaid.

In December 2019, we, the Guarantors and the Lenders and the Agent entered into an amendment ("Amendment No. 2") to the Loan Agreement. Under the terms of Amendment No. 2, the Lenders agreed that, in the event of an optional prepayment of all or any portion of the Term Loans on or prior to March 31, 2020, the prepayment fee will be equal to 3% of the principal amount of the Term Loans being prepaid, and we will not be required to pay any Make-Whole Payment. Pursuant to Amendment No. 2, we also agreed to certain financial milestones and to fund and maintain, in a blocked liquidity account, an amount equal to (i) $2.5 million, or (ii) $20.0 million upon the achievement by us of certain financial milestones; provided, that the amount required to be maintained in the blocked liquidity account will be $10.0 million if we make an optional prepayment of at least $50.0 million in principal amount of the Term Loans on or prior to March 31, 2020.

Subsequent to December 31, 2019 through February 28, 2020, the Company repaid approximately $37.0 million of outstanding principal under the Term Loans plus approximately $1.9 million of related prepayment premium, exit fees and accrued interest thereon. Approximately $11.8 million of such repayment was effectuated through a release by the Lenders of all amounts held in a debt service reserve account for the benefit of the Lenders and of all amounts in the blocked liquidity account. The Company is no longer required to maintain any amounts in the debt service reserve account or the blocked liquidity account, but has committed to meet minimum capital-raising and debt repayment requirements, pursue restructuring arrangements, and pursue the sale of one or more non-core assets in the first half of 2020.

Scilex Notes

In September 2018, Scilex Pharma entered into purchase agreements (the "2018 Purchase Agreements") with certain investors (the "Purchasers") and us. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex Pharma, among other things, issued and sold to the Purchasers the Scilex Notes with an aggregate principal of $224.0 million for an aggregate purchase price of $140.0 million (the "Offering"). The net proceeds of the Offering were approximately $89.3 million, after deducting the Offering expenses payable by Scilex Pharma and funding a segregated reserve account ($20.0 million) (the "Reserve Account") and a segregated collateral account ($25.0 million) (the "Collateral Account") pursuant to the terms of an indenture governing the Scilex Notes (the "Indenture"). The net proceeds of the Offering have been used by Scilex Pharma to support the commercialization of ZTlido, for working capital and general corporate purposes in respect of the commercialization of ZTlido. In connection with the Offering, Scilex Pharma also entered into the Indenture governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the "Trustee") and collateral agent

(the “Collateral Agent”), and us. Pursuant to the Indenture, we agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex Pharma under the Indenture.

Pursuant to the terms of the Indenture, we issued an irrevocable standby letter of credit to Scilex Pharma (the “Letter of Credit”), which provides that, in the event that (1) Scilex Pharma does not hold at least $35,000,000 in restricted and unrestricted cash (which is inclusive of the amount in the Collateral Account) as of the end of any calendar month during the term of the Scilex Notes, (2) actual cumulative net sales of ZTlido from the issue date of the Scilex Notes through December 31, 2021 are less than a specified sales threshold for such period, or (3) actual cumulative net sales of ZTlido for any calendar year during the term of the Scilex Notes, beginning with the 2022 calendar year, are less than a specified sales threshold for such calendar year, Scilex Pharma, as beneficiary of the Letter of Credit, will draw, and we will pay to Scilex Pharma, $35,000,000 in a single lump-sum amount as a subordinated loan, and upon receipt by Scilex Pharma of the subordinated loan, the holders of the Scilex Notes shall have the one-time right to require us to purchase up to an aggregate of $25,000,000 of the Scilex Notes then outstanding. The Letter of Credit will terminate upon the earliest to occur of: (a) the repayment of the Scilex Notes in full, (b) the actual net sales of ZTlido for any calendar year during the term of the Scilex Notes exceeding a certain threshold, (c) the consummation of an initial public offering on a major international stock exchange by Scilex Holding that satisfies certain valuation thresholds, and (d) the replacement of the Letter of Credit with another letter of credit in form and substance, including as to the identity and creditworthiness of issuer, reasonably acceptable to the holders of at least 80% in principal amount of outstanding Scilex Notes.

Funds in the Reserve Account will be released to Scilex Pharma upon receipt by the Trustee of an officer’s certificate under the Indenture from Scilex Pharma confirming receipt of a marketing approval letter from the FDA with respect to SP-103 (the “Marketing Approval Letter”) on or prior to July 1, 2023. Funds in the Collateral Account will be released upon receipt of a written consent authorizing such release from the holders of a majority in principal amount of the Scilex Notes issued, upon the occurrence and during the continuance of an event of default at the direction of the holders of a majority in principal amount of the Scilex Notes issued or upon the repayment in full of all amounts owed under the Scilex Notes.

The holders of the Scilex Notes will be entitled to receive quarterly payments of principal of the Scilex Notes equal to a percentage, in the range of 10% to 20% of the net sales of ZTlido for the prior fiscal quarter, beginning on February 15, 2019. If Scilex Pharma has not received the Marketing Approval Letter from the FDA with respect to SP-103 or a similar product with a concentration of not less than 5% by March 31, 2021, the percentage of net sales payable shall be increased to be in the range of 15% to 25%. If actual cumulative net sales of ZTlido from October 1, 2022 through September 30, 2023 are less than 60% of a predetermined target sales threshold for such period, then Scilex Pharma will be obligated to pay an additional installment of principal of the Scilex Notes each quarter in an amount equal to an amount to be determined by reference to the amount of such deficiency. The aggregate principal amount due under the Scilex Notes shall be increased by $28,000,000 on February 15, 2022 if actual cumulative net sales of ZTlido from the issue date of the Scilex Notes through December 31, 2021 do not equal or exceed 95% of a predetermined target sales threshold for such period. If actual cumulative net sales of ZTlido for the period from October 1, 2022 through September 30, 2023 do not equal or exceed 80% of a predetermined target sales threshold for such period, the aggregate principal amount shall also be increased on November 15, 2023 by an amount equal to an amount to be determined by reference to the amount of such deficiency.

In October 2019, Scilex Pharma, us, the Trustee, the Collateral Agent and the beneficial owners of the Scilex Notes and the holders of such Scilex Notes listed on the signature pages thereto entered into an omnibus amendment (the “Omnibus Amendment”) to the Indenture and the Letter of Credit.

In connection with the Omnibus Amendment, in the event of consummation of an initial public offering of Scilex Holding (a “Scilex Holding IPO”) that satisfies certain valuation thresholds, Scilex Pharma agreed to repurchase, from each holder of Scilex Notes, Scilex Notes in a principal amount equal to (i) $20.0 million multiplied by (ii) a fraction the numerator of which will be the then outstanding principal amount of the Scilex Notes held by such holder and the denominator of which will be the then outstanding principal amount of all of the outstanding Scilex Notes, at a purchase price in cash equal to 100% of the principal amount thereof (such repurchase, the “Effective Date Repurchase”). Pursuant to the Omnibus Amendment, the holders of the Scilex Notes agreed to release the funds in the reserve account for the purpose of consummating the Effective Date Repurchase and the remaining funds in the reserve account after the consummation of the Effective Date Repurchase will be released to Scilex Pharma by the Trustee and the Collateral Agent.

The Omnibus Amendment also modifies the Letter of Credit to provide that one of the conditions that will terminate the Letter of Credit will be the consummation of a Scilex Holding IPO that satisfies certain valuation thresholds. The Omnibus Amendment will be effective upon the satisfaction of certain terms and conditions, including the consummation of the Effective Date Repurchase. The Omnibus Amendment will terminate if the Omnibus Amendment does not become effective on or prior to October 1, 2020.

Each of the Debt Arrangements provide that, upon the occurrence of an event of default, the Purchasers thereof may, by written notice to the Company, declare all of the outstanding principal and interest under such Debt Arrangements immediately due and payable. For purposes of the Debt Arrangements, an event of default includes, among other things, (i) a failure to pay any amounts when due under the Debt Arrangements, (ii) a breach or other failure to comply with the covenants (including financial, notice and reporting covenants) under the Debt Arrangements, (iii) a failure to make any payment on, or other event triggering an acceleration under, other material indebtedness of the Company, which would include, with respect to the 2018 Oaktree Term Loan Agreement, a failure or acceleration under the 2018 Purchase Agreements and Indenture for Scilex, and with respect to the 2018 Purchase Agreements and Indenture for Scilex, a failure or acceleration under the 2018 Oaktree Term Loan Agreement, and (iv) the occurrence of certain insolvency or bankruptcy events (both voluntary and involuntary) involving the Company or certain of its subsidiaries. The Company is in compliance with event of default clauses under the Debt Arrangements.

Equity Financings

Purchase Agreement with Aspire Capital

On February 10, 2020, we entered into a Common Stock Purchase Agreement (the "Aspire Purchase Agreement") with Aspire Capital Fund, LLC, an Illinois limited liability company ("Aspire Capital"), pursuant to which Aspire Capital is committed to purchase up to an aggregate of $75.0 million of shares of our common stock over the 24-month term of the Aspire Purchase Agreement on the terms set forth therein. Upon execution of the Aspire Purchase Agreement, we issued and sold to Aspire Capital under the Aspire Purchase Agreement 2,991,027 shares of our common stock at a price per share of $2.5075, for an aggregate purchase price of $7,500,000.

Pursuant to the terms of the Aspire Purchase Agreement, on any business day selected by us, we have the right, but not the obligation, to direct Aspire Capital, by delivering to Aspire Capital a notice (each, a "Purchase Notice"), to purchase on such date (each, a "Purchase Date") the number of shares of our common stock set forth in the Purchase Notice, in an amount of up to 500,000 shares of our common stock (subject to adjustment for recapitalizations, stock splits and similar matters), for up to $2,000,000 of shares of our common stock in the aggregate (unless otherwise mutually agreed by us and Aspire Capital), at a price per share equal to the lesser of (1) the lowest sale price of our common stock on the Purchase Date, and (2) the arithmetic average of the three lowest closing sale prices for our common stock during the ten consecutive business days ending on the business day immediately preceding the Purchase Date. We and Aspire Capital also may mutually agree to increase the number of shares that may be sold to as much as an additional 4,000,000 shares per business day.

In addition, on any business day on which we deliver a Purchase Notice directing Aspire Capital to purchase at least 500,000 shares of our common stock (subject to any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar transaction), we have the right, but not the obligation, to direct Aspire Capital, by delivering to Aspire Capital a volume-weighted average purchase notice (each, a "VWAP Purchase Notice"), to purchase on the next business day (each, a "VWAP Purchase Date") the number of shares of our common stock that is equal to the percentage set forth in the VWAP Purchase Notice (which may not exceed 30%) of the trading volume of our common stock on the Nasdaq Capital Market on such VWAP Purchase Date, subject to a maximum number of shares of our common stock as determined by us in our sole discretion. The price per share for any shares of our common stock purchased under a VWAP Purchase Notice will be equal to the lesser of: (1) the closing sale price of our common stock on the VWAP Purchase Date, and (2) 97% of the volume-weighted average price of our common stock on the Nasdaq Capital Market on the VWAP Purchase Date, subject to certain exceptions.

2019 Registered Direct Offering

In October 2019, we announced the closing of our previously announced registered direct offering of 10,869,566 shares of our common stock and warrants to purchase up to 10,869,566 shares of our common stock, at a combined purchase price of $2.30 per share and related warrant. The net proceeds from this offering were approximately $23.4 million, after deducting the placement agent's fees and other estimated offering expenses, and were received in October 2019.

Equity Distribution Agreement

In October 2019, we entered into an Equity Distribution Agreement (the "Distribution Agreement") with JMP Securities LLC, as sales agent, pursuant to which we may offer and sell, from time to time, through or to the Sales Agent, as sales agent or principal, up to $75.0 million in shares of our common stock. Effective February 10, 2020, we voluntarily suspended our continuous offering and sale of shares under the Distribution Agreement.

2019 Public Offering of Common Stock and Warrants

In June 2019, we entered into an underwriting agreement with JMP Securities LLC, as representative of the several underwriters named therein, relating to a firm commitment underwritten public offering. The net proceeds from this offering were approximately $23.3 million, after deducting underwriting discounts and commissions and other estimated offering expenses, and were received in July 2019.

Universal Shelf Registration

In November 2017, the Company filed a universal shelf registration statement on Form S-3 (the "2017 Shelf Registration Statement") with the SEC, which was declared effective by the SEC in December 2017. The 2014 Shelf Registration Statement expired on December 6, 2017 when the 2017 Shelf Registration was declared effective. This 2017 Shelf Registration Statement provides the Company with the ability to offer up to $350 million of securities, including equity and other securities as described in the registration statement. Included in the 2017 Shelf Registration Statement was a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $100.0 million of the Company's common stock that may be issued and sold under a sales agreement with B. Riley FBR, Inc. (the "ATM Facility"). During the twelve months ended December 31, 2018, the Company sold approximately $83.6 million in shares of common stock under the ATM Facility. Subsequently, the ATM Facility was cancelled during the twelve months ended December 31, 2019. As of February 14, 2020, approximately $17.1 million of securities remain available and unallocated for offerings of securities under the 2017 Shelf Registration Statement.

Contingent Considerations

Semnur Pharmaceuticals Acquisition Contingent Consideration

In March 2019, we, for limited purposes, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Semnur, Scilex Holding, Sigma Merger Sub, Inc., the prior wholly-owned subsidiary of Scilex Holding, and Fortis Advisors LLC, solely as representative of the holders of Semnur equity (the "Semnur Equityholders"). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions contained therein, Scilex Holding agreed to pay the Semnur Equityholders up to $280.0 million in aggregate contingent cash consideration based on the achievement of certain milestones, including obtaining the first approval of a New Drug Application of a Semnur product by the FDA and the achievement of certain amounts of net sales of Semnur products.

Sofusa Contingent Consideration

On July 2, 2018, we entered into an Asset Purchase Agreement (the "Sofusa Purchase Agreement") with Kimberly-Clark Corporation ("KCC"); Kimberly-Clark Global Sales, LLC ("KCCGS"); and Kimberly-Clark Worldwide, Inc. ("KCCW" and together with KCC and KCCGS, "Kimberly-Clark") pursuant to which, among other things, we acquired certain of Kimberly-Clark's assets related to a micro-needle drug delivery system, including the Sofusa® platform (the "Sofusa Assets") and related fixed assets, and assumed certain of Kimberly-Clark's liabilities related to the Sofusa Assets (the "Sofusa Acquisition"). The closing of the Sofusa Acquisition (the "Sofusa Closing") occurred on July 2, 2018. At the Sofusa Closing, we paid $10 million and agreed to pay additional consideration to Kimberly-Clark upon the achievement of certain regulatory and net sales milestones, as well as a percentage in the low double-digits of any non-royalty amounts received by us in connection with any license, sale or other grant of rights by us to develop or commercialize the Sofusa Assets (all such additional consideration, the "Sofusa Contingent Consideration"). Under the Sofusa Purchase Agreement, the aggregate amount of the Sofusa Contingent Consideration payable by us will not exceed $300.0 million.

Use of Cash

Cash Flows from Operating Activities. Net cash used for operating activities was $173.0 million for 2019 as compared to $111.8 million for 2018. Net cash used in 2019 reflects a net loss of $363.0 million, which was partially offset by charges related to acquired in-process research and development of $75.3 million, as well as other non-cash reconciling items totaling approximately $114.7 million, primarily related to a loss on debt settlement / extinguishment, non-cash interest expense, loss on derivative liabilities, depreciation and amortization and stock-based compensation. Net cash used in 2018 reflects a net loss of $212.5 million, which was partially offset by non-cash interest expense charges of $52.8 million, as well as other non-cash charges totaling $41.9 million, primarily related to depreciation and amortization, stock based compensation, charges related to acquired IPR&D, loss on debt extinguishment, loss on equity investments and loss on contingent liabilities.

We expect to continue to incur substantial and increasing losses and negative net cash flows from operating activities as we seek to expand and support our clinical and pre-clinical development and research activities, support the commercial launch of our products and fund our joint ventures, collaborations and other third party agreements.

Cash Flows from Investing Activities. Net cash used for investing activities was $38.2 million for 2019 as compared to $21.2 million for 2018. Our investing activities used $11.4 million to acquire equipment and building improvements, $1.2

million in capital contributions to joint ventures and approximately $17.0 million associated with the acquisition of Semnur-related in-process research and development and related assets during the year ended December 31, 2019. Net cash used in investing activities for 2018 included $11.2 million to acquire equipment and building improvements and $10.0 million for the Sofusa Purchase Agreement. We expect to increase our investment in equipment and implement facility improvements as we seek to expand and progress our research and development capabilities.

Cash Flows from Financing Activities. Net cash provided by financing activities was $78.9 million for 2019 as compared to $326.0 million for 2018. The decrease is primarily attributed to higher proceeds from the issuance of debt in the prior year, which included the convertible notes, Initial Term Loan and Scilex Notes, as well as lower proceeds from the issuance of common stock during the year ended December 31, 2019.

Future Liquidity Needs. We have principally financed our operations through underwritten public offerings and private debt and equity financings, as we have not generated any significant product related revenue from our principal operations to date, and do not expect to generate significant revenue for several years, if ever. We will need to raise additional capital before we exhaust our current cash resources in order to continue to fund our research and development, including our plans for clinical and preclinical trials and new product development, as well as to fund operations generally. We will seek to raise additional funds through various potential sources, such as equity and debt financings or through corporate collaboration and license agreements. We can give no assurances that we will be able to secure such additional sources of funds to support our operations, or, if such funds are available to us, that such additional financing will be sufficient to meet our needs. These conditions, among others, raise substantial doubt about our ability to continue as a going concern.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we issue additional equity securities to raise funds, the ownership percentage of existing stockholders would be reduced. New investors may demand rights, preferences or privileges senior to those of existing holders of common stock. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates. We may also seek collaborators for one or more of our current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. These factors raise substantial doubt about our ability to continue as a going concern. Our financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K do not include any adjustments that might result from the outcome of these uncertainties.

We anticipate that we will continue to incur net losses into the foreseeable future as we: (i) advance our product pipeline and other product candidates into clinical trials, (ii) continue our development of, and seek regulatory approvals for, our product candidates in clinical trials, (iii) continue our development of, and seek regulatory approvals for, our product candidates, (iv) expand our corporate infrastructure, and (v) incur our share of joint venture and collaboration costs for our products and technologies.

Uses of Cash. We have and plan to expand our business and intellectual property portfolio through the acquisition of new businesses and technologies as well as entering into licensing arrangements.

Critical Accounting Policies

Our consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe the following accounting policies and estimates are most critical to aid in understanding and evaluating our reported financial results.

Revenue Recognition. Our revenues are generated from license revenues, product revenues, the sale of customized reagents and other materials and contract manufacturing and other services. We do not have significant costs associated with costs to obtain contracts with our customers. Substantially all of our revenues and accounts receivable result from contracts with customers.

License fees for the licensing of product rights are recorded as deferred revenue upon receipt of cash and recognized as revenue on a straight-line basis over the license period, with the exception of license agreements with no remaining performance obligations or undelivered obligations. We apply judgment in determining the timing of revenue recognition

related to contracts that include multiple performance obligations. The total transaction price of the contract is allocated to each performance obligation in an amount based on the estimated relative standalone selling prices of the promised goods or services underlying each performance obligation. For goods or services for which observable standalone selling prices are not available, we develop an estimated standalone selling price of each performance obligation.

Product and service revenues are comprised of product sales of ZTlido by Scilex Pharma, contract manufacturing associated with sales of customized reagents, materials and supply agreements and contract manufacturing services. Reagents are used for preparing ADCs, these reagents include industrial standard cytotoxins, linkers, and linker-toxins. The contract development services include providing synthetic expertise to customer's synthesis by delivering them proprietary cytotoxins, linkers and linker-toxins and ADC service using industry standard toxin and antibodies provided by customers.

We recognize revenue when control of the products is transferred to the customers in an amount that reflects the consideration we expect to receive from the customers in exchange for those products and services. This process involves identifying the contract with a customer, determining the performance obligations in the contract and the contract price, allocating the contract price to the distinct performance obligations in the contract and recognizing revenue when the performance obligations have been satisfied. A performance obligation is considered distinct from other obligations in a contract when it provides a benefit to the customer either on its own or together with other resources that are readily available to the customer and is separately identified in the contract. We consider a performance obligation satisfied once we have transferred control of a good or service to the customer, meaning the customer has the ability to use and obtain the benefit of the good or service. We recognize revenue for satisfied performance obligations only when no significant reversals are expected. (See Note 1 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K).

Revenues from product sales is fully comprised of sales of ZTlido. Our performance obligation with respect to sales of ZTlido is satisfied at a point in time, which transfers control upon delivery of product to the customer. We consider control to have transferred upon delivery because the customer has legal title to the asset, physical possession of the asset has been transferred to the customer, the customer has significant risks and rewards of ownership of the asset, and we have a present right to payment at that time. We identified a single performance obligation. Invoicing typically occurs upon shipment and the length of time between invoicing and when payment is due is not significant. The aggregate dollar value of unfulfilled orders as of December 31, 2019 was not material.

For product sales, we record gross-to-net sales adjustments for government and managed care rebates, chargebacks, wholesaler and distributor fees, sales returns and prompt payment discounts. Such variable consideration is estimated in the period of the sale and is estimated using a most likely amount approach based primarily upon provisions included in our customer contract, customary industry practices and current government regulations. Contract liabilities are recorded under accrued expenses within our consolidated balance sheet. We consider relevant information when estimating variable consideration such as assessment of our current and anticipated sales and demand forecasts, actual payment history, information from third parties regarding the payor mix for products, specific known market events and trends. We include estimated amounts for such variable consideration in the net sales price to the extent it is determined probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved.

Investments in Other Entities. We hold a portfolio of investments in equity securities that are accounted for under either the equity method or cost method. Investments in entities over which we have significant influence but not a controlling interest are accounted for using the equity method, with our share of earnings or losses reported in loss on equity investments.

All investments are reviewed on a regular basis for possible impairment. If an investment's fair value is determined to be less than its net carrying value and the decline is determined to be other-than-temporary, the investment is written down to its fair value. Such an evaluation is judgmental and dependent on specific facts and circumstances. Factors considered in determining whether an other-than-temporary decline in value has occurred include: the magnitude of the impairment and length of time that the estimated market value was below the cost basis; financial condition and business prospects of the investee; our intent and ability to retain the investment for a sufficient period of time to allow for recovery in market value of the investment; issues that raise concerns about the investee's ability to continue as a going concern; any other information that we may be aware of related to the investment. We do not report the fair value of our equity investments in non-publicly traded companies because it is not readily determinable. (See Note 1 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K).

Debt, *Including Debt With Detachable Warrants.* Debt with detachable warrants are evaluated for the classification of warrants as either equity instruments, derivative liabilities, or liabilities depending on the specific terms of the warrant agreement. In circumstances in which debt is issued with equity-classified warrants, the proceeds from the issuance of convertible debt are first allocated to the debt and the warrants at their relative estimated fair values. The portion of the

proceeds so allocated to the warrants are accounted for as paid-in capital and a debt discount. The remaining proceeds, as further reduced by discounts created by the bifurcation of embedded derivatives and beneficial conversion features, are allocated to the debt. We account for debt as liabilities measured at amortized cost and amortize the resulting debt discount from the allocation of proceeds, to interest expense using the effective interest method over the expected term of the debt instrument. We consider whether there are any embedded features in debt instruments that require bifurcation and separate accounting as derivative financial instruments pursuant to Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging.* Embedded features that require bifurcation are initially and subsequently measured at fair value. See Note 4 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for additional discussion on the derivative liabilities associated with embedded features in our debt instruments.

If the amount allocated to the convertible debt results in an effective per share conversion price less than the fair value of our common stock on the commitment date, the intrinsic value of this beneficial conversion feature is recorded as a discount to the convertible debt with a corresponding increase to additional paid in capital. The beneficial conversion feature discount is equal to the difference between the effective conversion price and the fair value of our common stock at the commitment date, unless limited by the remaining proceeds allocated to the debt.

We may enter financing arrangements, the terms of which involve significant assumptions and estimates, including future net product sales, in determining interest expense, amortization period of the debt discount, as well as the classification between current and long-term portions. In estimating future net product sales, we assess prevailing market conditions using various external market data against our anticipated sales and planned commercial activities. Consequently, we impute interest on the carrying value of the debt and record interest expense using an imputed effective interest rate. We reassess the expected payments each reporting period and account for any changes through an adjustment to the effective interest rate on a prospective basis, with a corresponding impact to the classification of our current and long-term portions.

Acquired In-Process Research and Development Expense. We have acquired and may continue to acquire the rights to develop and commercialize new drug candidates. The up-front payments to acquire a new drug compound or drug delivery devices, as well as future milestone payments associated with asset acquisitions that do not meet the definition of a derivative and are deemed probable to achieve the milestones, are immediately expensed as acquired in-process research and development provided that the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, have no alternative future use. The acquired in-process research and development related to the business combination of Virttu, for which certain products are under development and expected to be commercialized in the future, was capitalized and recorded within "Intangibles, net" on the accompanying consolidated balance sheet. We commenced amortization of acquired in-process research and development related to the business combination of Scilex Pharma upon commercialization of ZTlido in October 2018. Capitalized in-process research and development will be reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable. (See Note 3 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for further discussion of acquired in-process research and development expense related to the Semnur and Sofusa acquisitions).

Contractual Obligations

As of December 31, 2019, our contractual obligations are as follows (in thousands):

	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Scilex Notes [1]	$ 221,666	$ 7,543	$ 33,346	$ 48,427	$ 132,350
Oaktree Term Loans [1]	166,450	10,956	21,912	133,582	—
Operating leases	95,532	9,807	19,046	19,652	47,027
Purchase obligations [2]	840	840	—	—	—
Total contractual obligations	$ 484,488	$ 29,146	$ 74,304	$ 201,661	$ 179,377

[1] Excludes non-cash interest expense. See Note 9 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

[2] Reflects non-cancelable commitments for planned Scilex Holding inventory purchases under contractual arrangements.

Off-Balance Sheet Arrangements

From our inception through December 31, 2019, we did not engage in any off-balance sheet arrangements, as defined in Item 303(a)(4) of Regulation S-K.

Recent Accounting Pronouncements

Refer to Note 1 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K for a discussion of recent accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk. Our exposure to market risk is confined to our cash and cash equivalents and debt. We have cash and cash equivalents and invest primarily in high-quality money market funds, which we believe are subject to limited credit risk. Due to the low risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our portfolio. We do not believe that we have any material exposure to interest rate risk arising from our investments and we do not use derivative financial instruments to hedge against interest rate risk.

The fair market value of our Loan Agreement is subject to interest rate risk as a portion of the interest rate fluctuates based on the LIBOR. Generally, the fair market value of the debt will vary as interest rates increase or decrease. We had $120.0 million outstanding under our loan agreement entered into with the Lenders and Oaktree Fund Administration, LLC, at December 31, 2019. The stated interest rate on these borrowings was 9.13% as of December 31, 2019. A hypothetical 100 basis point adverse move in interest rates would increase our annual interest expense by approximately $1.2 million. We have determined that there was no material market risk exposure from such instruments to our consolidated financial position, results of operations or cash flows as of December 31, 2019.

We are not subject to interest rate risk on the Scilex Notes associated with our 2018 Purchase Agreements as repayment of the Scilex Notes is determined by projected net sales as further discussed in Note 9 in the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K. For both the Notes and Scilex Notes, changes in interest rates will generally affect the fair value of the debt instrument, but not our earnings or cash flows.

Capital Market Risk. We currently do not have significant revenues from grants or sales and services and we have no product revenues from our planned principal operations and therefore depend on funds raised through other sources. One source of funding is through future debt or equity offerings. Our ability to raise funds in this manner depends upon, among other things, capital market forces affecting our stock price.

Concentration Risk. During the fiscal year ended December 31, 2019 and 2018, sales to the sole customer and third-party logistics distribution provider of Scilex Pharma, Cardinal Health, represented 100% of the net revenue of Scilex Pharma. This exposes us to concentration of customer risk. We monitor the financial condition of the sole customer of Scilex Pharma, limit our credit exposure by setting credit limits, and did not experience any credit losses for the years ended December 31, 2019 and 2018. As we continue to expand the commercialization of ZTlido, we are not limited to the current customer and have the option of expanding our distribution network with additional distributors through establishing our own affiliates, by acquiring existing third-party business or product rights or by partnering with additional third parties.

Item 8. Financial Statements and Supplementary Data.

Our consolidated financial statements and supplementary data required by this item are set forth at the pages indicated in Item 15(a)(1) and (a)(2), respectively, of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed,

summarized and reported within the time periods specified in the SEC's regulations, rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow for timely decisions regarding required disclosure.

An evaluation was conducted under the supervision and with the participation of our management, including the CEO and CFO, on the effectiveness of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on this evaluation, our CEO and CFO concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Annual Report on Form 10-K.

Remediation of Previously Disclosed Material Weaknesses

As disclosed in Item 9A in our Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on March 15, 2019, our management previously identified material weaknesses in our internal control over financial reporting related to inadequate evaluation of underlying assumptions associated with the accounting for key terms identified in significant agreements and insufficient accounting resources. During 2019, our management, with the oversight of the Audit Committee of our Board of Directors, engaged in efforts to remediate the material weaknesses identified and previously disclosed.

We completed these remediation measures in the quarter ended December 31, 2019, including testing of the design and concluding on the operating effectiveness of the related controls.

Specifically, a Chief Accounting Officer ("CAO") with the appropriate knowledge and experience was hired. Under the direction from the CFO and CAO, we then implemented enhanced review procedures and documentation standards to monitor and review all unique, complex and/or significant accounting transactions. Additionally, the CAO plays a key role in enhancing the internal communication between senior executive management, accounting personnel, related business owners and external accounting experts in the performance of reviewing significant and complex accounting issues. Our management took further action by completing a robust review of all internal controls to strengthen documentation, validate processes and communicate accountability for performance of internal control responsibilities. Further, the competence of other accounting personnel, including outsourced service providers, was evaluated and necessary adjustments were made. Accordingly, the material weaknesses are considered to be remediated.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our CEO and our CFO, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the evaluation of our disclosure controls and procedures under this framework, our CEO and CFO have concluded that our internal control over financial reporting was effective as of December 31, 2019.

The effectiveness of our internal control over financial reporting at December 31, 2019 has also been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which appears herein.

Inherent Limitations over Internal Controls

Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles. Our 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 company;

(2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made in accordance with authorizations of management and directors; and

(3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations, including the possibility of human error and circumvention by collusion or overriding of controls. Accordingly, even an effective internal control system may not prevent or detect material misstatements on a timely basis. Additionally, 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.

Changes in Internal Control Over Financial Reporting

Other than the remediation efforts to address the previously disclosed material weaknesses, there were no changes to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15-d-15(f) under the Exchange Act) that occurred during the quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Board of Directors

The following table sets forth the names, ages as of February 15, 2020, and certain other information for each member of our board of directors (our "Board"):

Name	Age	Position
Henry Ji, Ph.D.	55	Chairman of the Board, President and Chief Executive Officer
Dorman Followwill	56	Director
Kim D. Janda, Ph.D.	62	Lead Independent Director
Edgar Lee	43	Director
David Lemus	57	Director
Jaisim Shah	59	Director
Dr. Robin L. Smith	55	Director
Yue Alexander Wu, Ph.D.	56	Director

Henry Ji, Ph.D. co-founded and has served as a director of Sorrento Therapeutics, Inc. since January 2006, served as its Chief Scientific Officer from November 2008 to September 2012, as its Interim Chief Executive Officer from April 2011 to September 2012, as its President and Chief Executive Officer since September 2012 and as Chairman of the Board since August 2017. Dr. Ji also served as our Secretary from September 2009 to June 2011. In 2002, Dr. Ji founded BioVintage, Inc., a research and development company focusing on innovative life science technology and product development, and has served as its President since 2002. From 2001 to 2002, Dr. Ji served as Vice President of CombiMatrix Corporation, a publicly traded biotechnology company that develops proprietary technologies, including products and services in the areas of drug development, genetic analysis, molecular diagnostics and nanotechnology. During his tenure at CombiMatrix, Dr. Ji was responsible for strategic technology alliances with biopharmaceutical companies. From 1999 to 2001, Dr. Ji served as Director of Business Development, and in 2001 as Vice President, of Stratagene Corporation (later acquired by Agilent Technologies, Inc.) where he was responsible for novel technology and product licensing and development. In 1997, Dr. Ji co-founded Stratagene Genomics, Inc., a wholly owned subsidiary of Stratagene Corporation, and served as its President and Chief Executive Officer from its founding until 1999. Dr. Ji previously served as a director of NantKwest, Inc. from December 2014 through November 25, 2015. Dr. Ji is the holder of several issued and pending patents in the life science research field and is the sole inventor of Sorrento Therapeutics Inc.'s intellectual property. Dr. Ji has a Ph.D. in Animal Physiology from the University of Minnesota and a B.S. in Biochemistry from Fudan University.

Dr. Ji has demonstrated significant leadership skills as President and Chief Executive Officer of Stratagene Genomics, Inc. and Vice President of CombiMatrix Corporation and Stratagene Corporation and brings more than 18 years of biotechnology and biopharmaceutical experience to his position on our Board. Dr. Ji's extensive knowledge of the industry in which we operate, as well as his unique role in our day-to-day operations as our President and Chief Executive Officer, allows him to bring to our Board a broad understanding of the operational and strategic issues we face.

Dorman Followwill has served as a director of our Company since October 2017. Mr. Followwill has been Senior Partner, Transformational Health at Frost & Sullivan, a business consulting firm involved in market research and analysis, growth strategy consulting and corporate training across multiple industries, since 2016. Prior to that time, he served in various roles at Frost & Sullivan, including Partner on the Executive Committee managing the P&L of the business in Europe, Israel and Africa, and Partner overseeing the Healthcare and Life Sciences business in North America, since initially joining Frost & Sullivan to help found the Consulting practice in January 1988. Mr. Followwill has more than 30 years of organizational leadership and management consulting experience, having worked on hundreds of consulting projects across all major regions and across multiple industry sectors, each project focused around the strategic imperative of growth. He obtained his BA from Stanford University in The Management of Organizations in 1985.

We believe that Mr. Followwill's extensive knowledge and understanding of the healthcare and life sciences industries qualify him to serve on our Board.

Kim D. Janda, Ph.D. has served as a director of our Company since April 2012 and as our lead independent director since March 2019. Dr. Janda has served as Ely R. Callaway, Jr. Chaired Professor in the Departments of Chemistry, Immunology and Microbial Science at The Scripps Research Institute since 1996 and as the Director of the Worm Institute of Research and Medicine (WIRM) at The Scripps Research Institute since 2005. Furthermore, Dr. Janda has served as a Skaggs Scholar within the Skaggs Institute of Chemical Biology, also at The Scripps Research Institute, since 1996. Dr. Janda holds a B.S. degree from the University of South Florida in Clinical Chemistry and a doctoral degree from the University of Arizona with Robert B. Bates in natural product total synthesis. A hallmark of his research is that Dr. Janda has been able to uniquely combine principles of medicinal chemistry together with modern molecular biology, immunology and neuropharmacology, allowing the creation of both synthetic/natural molecules and processes with biological, chemical and physical properties. Dr. Janda has published over 425 original publications in refereed journals and founded the biotechnological companies CombiChem, Drug Abuse Sciences and AIPartia. Dr. Janda is associate editor of Bioorg & Med. Chem., PloS ONE and serves, or has served, on numerous journals including J. Comb. Chem., Chem. Reviews, J. Med. Chem., The Botulinum Journal, Bioorg. & Med. Chem. Lett., and Bioorg. & Med. Chem. Over a career of almost 25 years, Dr. Janda has provided numerous seminal contributions and is considered one of the first scientists to merge chemical and biological approaches into a cohesive research program. Dr. Janda serves on the Scientific Advisory Boards of Materia, Inc. and Singapore Ministry of Education (MOE), EP1 Physical Sciences.

Dr. Janda has almost 25 years of experience in life sciences and very strong technical expertise relating to the discovery and development of antibody therapeutics, which gives him a unique understanding of the research challenges and opportunities facing our company. As an experienced scientist and inventor on multiple patents in the life sciences industry, Dr. Janda brings critical insights into the operational requirements of a discovery and development company as well as to our overall business and strategies relating to our ongoing development efforts, and serves as the chair of our Scientific Advisory Board.

Edgar Lee has served as a director of our Company since December 2019. He founded Oaktree Capital Management, L.P.'s Strategic Credit strategy in 2012. Until September 2019, he served as the strategy's Portfolio Manager and Managing Director and grew the strategy to over $5 billion in assets. Mr. Lee also served as the Chairman of the Board of Directors, Chief Executive Officer and Chief Investment Officer of Oaktree Strategic Income II, Inc. (Nasdaq: OCSI). From October 2017 to September 2019, Mr. Lee served as Chief Executive Officer and Chief Investment Officer for Oaktree Specialty Lending Corporation and Oaktree Strategic Income Corporation. From 2007 to 2013, Mr. Lee was a senior investment professional within Oaktree Capital Management, L.P.'s Distressed Debt group and led several of the group's investments in the healthcare, technology, media and telecommunication industries. Prior to joining Oaktree, Mr. Lee worked within the Investment Banking division at UBS Investment Bank in Los Angeles and within the Fixed Income division at Lehman Brothers Inc. Mr. Lee has served on the board of directors of Neo Performance Materials Inc. (TSX: NEO) since August 2016 and previously served on the boards of directors of Nine Entertainment Co. (ASX: NEC) and Charter Communications, Inc. (Nasadq: CHTR). Mr. Lee received a B.A. degree in economics from Swarthmore College and an M.P.P. from Harvard University.

We believe that Mr. Lee's investment and investing experience and knowledge of finance and investment banking qualify him to serve on our Board.

David Lemus has served as a director of our Company since October 2017. Mr. Lemus currently serves as a non-executive board member of BioHealth Innovation, Inc. Since November 2017, he has served as the Chief Operating Officer and Chief Financial Officer of Proteros biosciences GmbH, a privately held biotechnology company focused on structural biology. Previously, from January 2016 to May 2017, he served as Interim Chief Financial Officer and Chief Operating Officer of Medigene AG, a publicly-listed German biotechnology company focused on the research and development of T-Cell-Receptor based immunotherapies. Prior to that time, at Sigma Tau Pharmaceuticals, Inc., he served as Chief Executive Officer from January 2013 to July 2015, as Chief Operating Officer from March 2012 to December 2012, and as V.P. Finance from July 2011 to February 2012. Previous to this, Mr. Lemus served as Chief Financial Officer and Executive V.P. of MorphoSys AG from January 1998 to May 2011. Prior to his role at MorphoSys AG, he held various positions, including Operations Manager and Controller (Pharma International Division) and Global IT Project Manager (Pharma Division) at Hoffman La Roche, Group Treasurer of Lindt & Spruengli AG and Treasury Consultant for Electrolux AB. Mr. Lemus received an M.S. from the Massachusetts Institute of Technology Sloan School of Management in 1988 and a B.S. in Accounting from the University of Maryland in 1984. Mr. Lemus is also a certified public accountant licensed in the State of Maryland.

We believe that Mr. Lemus' extensive accounting and financial background and business experience in the life sciences industry qualify him to serve on our Board.

Jaisim Shah has served as a director of our Company since September 2013. He has more than 25 years of global biopharma experience including over 15 years in senior management leading business development, commercial operations, investor relations, marketing and medical affairs. Mr. Shah has served as the President and Chief Executive Officer and board member of Scilex Holding Company since its inception in March 2019. He has also served as the Chief Executive Officer and board member of Semnur Pharmaceuticals, Inc. since its inception in 2013. Prior to Semnur, Mr. Shah was a consultant to several businesses, including Sorrento Therapeutics, Inc., and was the Chief Business Officer of Elevation Pharmaceuticals, where Mr. Shah led a successful sale of Elevation to Sunovion in September 2012. Prior to Elevation, Mr. Shah was president of Zelos Therapeutics, where Mr. Shah focused on financing and business development. Prior to Zelos, Mr. Shah was the Senior Vice President and Chief Business Officer at CytRx, a biopharmaceutical company. Previously, Mr. Shah was Chief Business Officer at Facet Biotech and PDL BioPharma where he completed numerous licensing/partnering and strategic transactions with pharmaceutical and biotech companies. Prior to PDL, Mr. Shah was at Bristol-Myers Squibb, most recently as Vice President of Global Marketing where he received the "President's Award" for completing one of the most significant collaborations in the company's history. Previously, Mr. Shah was at F. Hoffman-La Roche in international marketing and was global business leader for corporate alliances with Genentech and Idec. Mr. Shah holds an M.A. in Economics from the University of Akron and an M.B.A. from Oklahoma University.

We believe that Mr. Shah's extensive operational, executive and business development experience qualifies him to serve on our Board.

Dr. Robin L. Smith has served as a director of our Company since December 2019. She has served as partner of BRM Holdings, LLC, a consulting firm, since March 2015. In 2007, Dr. Smith founded The Stem for Life Foundation (SFLF), a nonprofit organization, and has served as Chairman of the Board and President of the Stem for Life Foundation since its inception. The Stem for Life Foundation is now part of the Cura Foundation of which Dr. Smith serves as Chairman of the Board and President. She has been Vice President of the Science and Faith STOQ Foundation in Rome since 2015 and has served as a member of its Board of Directors since 2012. She also co-founded Spiritus Therapeutics, Inc. in 2018 and serves as President and Chairman of the Board. In addition, Dr. Smith has extensive experience serving in executive and board level

capacities for various medical enterprises and healthcare-based entities. From 2006 to 2015, Dr. Smith served as Chairman and CEO of Caladrius Biosciences, Inc. (formerly NeoStem Inc.) (Nasdaq: CLBS). She has been Chairman of the board of directors of Mynd Analytics, Inc. (Nasdaq: MYND) since August 2015 and then its successor Emmaus Medical, Inc. (OTC: EMMA) until September 2019, served on the board of directors of Rockwell Medical, Inc. (Nasdaq: RMTI) from June 2016 to November 2019, served on the board of Seelos Therapeutics, Inc. (Nasdaq: SEEL) since January 2019 and served on the board of directors of Celularity, Inc. since August 2019. She has been a member of the Board of Overseers at the NYU Langone Medical Center in New York since 2014, a member of the International Board of Sanford Health since 2016, co-chairman of the Life Sci advisory board on gender diversity since April 2016, a member of the board of directors of Alliance for Regenerative Medicine (ARM) Foundation since 2017 and a co-founder and member of the board of directors of Unite to Prevent Cancer Foundation since 2018. She has served as a voluntary Clinical Associate Professor in the Department of Medicine at the Rutgers, New Jersey Medical School since 2017. She served on the Board of Trustees of the NYU Langone Medical Center from 2006 to 2014 and was on the board of directors of Signal Genetics, Inc. (Nasdaq: SGNL) from July 2014 to February 2016, BioXcel Corporation from August 2015 to June 2017 and ProLung Inc. from February 2017 to July 2018. Dr. Smith received her M.D. from Yale University, an M.B.A. from the Wharton School of Business and a B.A. from Yale University.

We believe that Dr. Smith's scientific background, as well as Dr. Smith's broader business development and corporate experience, qualify her to serve on our Board.

Yue Alexander Wu, Ph.D. has served as a director of our Company since August 2016. He was previously President, Chief Executive Officer and Chief Strategy Officer of Crown Bioscience International, a leading global drug discovery and development solutions company, which he co-founded in 2006, until 2017. From 2004 to 2006, Dr. Wu was Chief Business Officer of Starvax International Inc. in Beijing, China, a biotechnology company focusing on oncology and infectious diseases. From 2001 to 2004, Dr. Wu was a banker with Burrill & Company where he was head of Asian Activities. Dr. Wu has served as a director of CASI Pharmaceuticals, Inc. (Nasdaq: CASI) since June 2013. Dr. Wu received his Ph.D. in Molecular Cell Biology and his MBA from University of California at Berkeley. He earned an M.S. in Biochemistry from University of Illinois, Urbana-Champaign and his B.S. in Biochemistry from Fudan University in Shanghai, China.

We believe that Dr. Wu's scientific background and business experience qualify him to serve on our Board.

Agreements with Directors

None of our directors was selected pursuant to any arrangement or understanding, other than compensation arrangements in the ordinary course of business and other than Mr. Lee, who was appointed to our Board pursuant to that certain letter agreement (the "Letter Agreement") between us and Oaktree Capital Management, L.P. ("Oaktree") whereby we agreed that our Board would increase the number of members of the Board and, subject to the satisfaction of certain conditions, appoint Mr. Edgar Lee as a member of our Board. We also agreed to nominate Mr. Lee as a director at the 2020 annual meeting of our stockholders and at each subsequent annual meeting during the term of the Letter Agreement. In the event that Mr. Lee resigns as a director or otherwise refuses or is unable to serve as a director during the term of the Letter Agreement, Oaktree may designate a replacement director who will be independent of Oaktree, considered an independent director of under the listing rules of The Nasdaq Stock Market LLC, is mutually agreed upon in writing by us and Oaktree and has a comparable amount of business experience to Mr. Lee. The Letter Agreement will terminate if, at any time, the aggregate principal amount of our term loans held by funds associated with Oaktree is $70.0 million or less.

Audit Committee

We have a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. Our Audit Committee is currently comprised of Messrs. Followwill and Lemus and Dr. Wu. Mr. Lemus serves as the Chairperson of the Audit Committee. Prior to March 18, 2019, our Audit Committee was comprised of Messrs. Shah and Lemus and Dr. Wu.

Our Board has determined that Mr. Lemus is an audit committee financial expert, as defined under applicable SEC rules, and that Messrs. Followwill and Lemus and Dr. Wu meet the background and financial sophistication requirements under the rules of The Nasdaq Stock Market LLC. In making these determinations, the Board made a qualitative assessment of each of Messrs. Followwill's and Lemus' and Dr. Wu's level of knowledge and experience based on a number of factors, including his formal education and experience. Both our independent registered public accounting firm and internal financial personnel regularly meet privately with our Audit Committee and have unrestricted access to the Audit Committee. The information under the heading "Board Independence" in Item 13 below is incorporated herein by reference.

Director Nominations

No material changes have been made to the procedures by which security holders may recommend nominees to our Board from those that were described in our Definitive Proxy Statement for our 2019 Annual Meeting of Stockholders that was filed with the SEC on August 14, 2019.

Executive Officers

The names of our executive officers and their ages as of February 15, 2020, positions, and biographies are set forth below. Dr. Ji's background is discussed under the section "Board of Directors."

Name	Age	Position
Henry Ji, Ph.D.	55	Chairman of the Board, President and Chief Executive Officer
Jiong Shao	51	Executive Vice President and Chief Financial Officer

Jiong Shao has been our Executive Vice President and Chief Financial Officer since March 2018. Prior to joining us, Mr. Shao was Managing Director, Head of U.S. Office, at CEC Capital, a financial advisory and investment firm. From 2015 to May 2017, Mr. Shao served as Managing Director, Head of China TMT Investment Banking at Deutsche Bank in Hong Kong. Prior to that time, from 2010 through 2015, he held various Managing Director positions at Macquarie Capital. From 2008 to 2010, Mr. Shao served as Executive Director, Asia Regional Head of Industrials Research, followed by Executive Director, Head of China-based Equity Research at Nomura International. He holds a Bachelor of Engineering from Shanghai Jiaotong University and a Masters of Business Administration from Fuqua School of Business, Duke University. Mr. Shao is a Chartered Financial Analyst.

Family Relationships

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

Legal Proceedings with Directors or Executive Officers

There are no legal proceedings related to any of our directors or executive officers that require disclosure pursuant to Items 103 or 401(f) of Regulation S-K.

Code of Ethics

We have adopted the Sorrento Therapeutics, Inc. Code of Business Conduct and Ethics that applies to all of our employees, executive officers and directors. The Code of Business Conduct and Ethics is available to stockholders on our Internet website at www.sorrentotherapeutics.com/investors/corporate-governance. If we make any substantive amendments to our Code of Business Conduct and Ethics or grant any waiver from a provision of our Code of Business Conduct and Ethics to any executive officer or director, we will promptly disclose the nature of the amendment or waiver on our Internet website at www.sorrentotherapeutics.com/investors/corporate-governance and/or in our public filings with the SEC.

Item 11. Executive Compensation.

Compensation Discussion and Analysis

Compensation Philosophy

The primary goals of our Board with respect to executive compensation are to attract and retain talented and dedicated executives, to tie annual and long-term cash and stock incentives to achievement of specified performance objectives, and to create incentives resulting in increased stockholder value. To achieve these goals, our Compensation Committee recommends to our Board executive compensation packages, generally comprising a mix of salary, discretionary bonus and equity awards. Although we have not adopted any formal guidelines for allocating total compensation between equity compensation and cash compensation, we have implemented and maintain compensation plans that tie a substantial portion of our executives' overall compensation to achievement of corporate goals.

Role of Compensation Consultant

The Compensation Committee has the power to engage independent advisors to assist it in carrying out its responsibilities. In 2019, the Compensation Committee re-engaged Compensia, Inc. ("Compensia"), a national compensation consulting firm, to review and advise on our compensation practices. The Compensation Committee assessed the independence of Compensia pursuant to SEC rules and concluded that the work of Compensia has not raised any conflict of interest.
In 2019, Compensia undertook the following projects for the Compensation Committee:

- January 2019 - Evaluated the compensation arrangements for the Company's CEO against a comparable group of similar life sciences companies and its own proprietary data;

- January 2019 - Evaluated the compensation arrangements for the members of the Company's Board of Directors against a comparable group of similar life sciences companies and its own proprietary data; and

- November 2019 - Evaluated practices with respect to employee stock purchase plans among a comparator group of similar life science companies and its own proprietary data.

With respect to the equity awards granted to our Chief Executive Officer and Chief Financial Officer in April 2019, the comparable group of life sciences companies consisted of the following companies, which were the same companies included in the comparator group of life sciences companies in our peer group in 2018, determined to: (i) generally have similar revenues as us; (ii) generally have similar market capitalization as us, (iii) generally have similar operating income as us, and (iv) generally have the same number of employees as us:

Agenus Inc.	MacroGenics, Inc.
Akebia Therapeutics, Inc.	Momenta Pharmaceuticals, Inc.
ChemoCentryx, Inc.	Omeros Corporation
CytomX Therapeutics, Inc.	PTC Therapeutics, Inc.
Eagle Pharmaceuticals, Inc.	Recro Pharma, Inc.
Inovio Pharmaceuticals, Inc.	Retrophin, Inc.
Keryx Biopharmaceuticals, Inc.	Vanda Pharmaceuticals Inc.
Lexicon Pharmaceuticals, Inc.	Vericel Corporation

In 2019, Compensia reviewed and advised the Compensation Committee on the matters described above.

In setting 2019 compensation, the Compensation Committee reviewed the competitive market analyses provided by Compensia in 2019 and 2018 and compared each named executive officer's base salary, target annual performance bonus and equity compensation value, separately and in the aggregate, to amounts paid to similarly-situated executives at our peer companies. The Compensation Committee believes that targeting compensation towards similarly situated executives at our peer companies helps achieve the compensation objectives described above. However, compensation for each named executive officer may vary from this range depending on other factors the Compensation Committee considers relevant, such as internal pay equity among our named executive officers or levels of authority, responsibility and experience of our named executive officers that exceed the norms for individuals holding comparably-titled positions at other companies.

With respect to the option awards granted to our Chief Executive Officer and Chief Financial Officer by Scilex Holding Company in June 2019, the decision to grant such options was approved by the disinterested members of the Board of Directors of Scilex Holding Company upon the recommendation of the Compensation Committee of the Board of Directors of Scilex Holding Company, which is comprised solely of independent directors that are also not on our Board or officers or employees of our company. Dr. Ji's option to purchase 3,016,652 shares of common stock of Scilex Holding Company was approved by our stockholders at our annual meeting of stockholders held on September 20, 2019.

Elements of Compensation

We evaluate individual executive performance with a goal of setting compensation at levels our Board or any applicable committee thereof believes are comparable with executives in other companies of similar size and stage of development while

taking into account our relative performance and our own strategic goals. The compensation received by our named executive officers consists of the following elements:

Base Salary

Base salaries for our executives are established based on the scope of their responsibilities and individual experience, taking into account competitive market compensation paid by other companies for similar positions within our industry.

The Compensation Committee considers compensation data from the peer companies to the extent the executive positions at these companies are considered comparable to our positions and informative of the competitive environment. Compensation data for our peer group were collected from available proxy-disclosed data. This information was gathered and analyzed for the 25th, 50th and 75th percentiles for annual base salary, short-term incentive pay elements and long-term incentive pay elements.

The amended and restated employment agreement between us and Dr. Ji, dated May 9, 2017, provides for an annual base salary for Dr. Ji of $600,000, as may be adjusted from time to time. Based on a review of Dr. Ji's individual performance since joining us in 2006 and the competitive market base pay data for chief executive officers included in our peer group in the May 2018 Report, effective May 29, 2018, the Compensation Committee increased Dr. Ji's annual base salary from $600,000 to $670,000 with retroactive effect to January 1, 2018. Dr. Ji's salary was not adjusted, and remained $670,000, during all of 2019.

The offer letter between us and Mr. Shao, our Executive Vice President and Chief Financial Officer, dated March 15, 2018, provides for an annual base salary for Mr. Shao of $450,000, as may be adjusted from time to time. Mr. Shao's salary was not adjusted, and remained $450,000, during all of 2019.

Variable Pay

We design our variable pay programs to be both affordable and competitive in relation to the market. We monitor the market and adjust our variable pay programs as needed. Our variable pay programs, such as our bonus program, are designed to motivate employees to achieve overall goals. Our programs are designed to avoid entitlements, to align actual payouts with the actual results achieved and to be easy to understand and administer.

Bonuses

Under the terms of our amended and restated employment agreement with Dr. Ji, Dr. Ji's target annual bonus is equal to 55% of his annual salary. Our offer letter with Mr. Shao provides that Mr. Shao's annual target bonus is equal to 35% of his annual salary. Neither Dr. Ji nor Mr. Shao received any accrued annual bonuses for 2018.

As of the date of the filing of this Annual Report on Form 10-K, the Compensation Committee has not yet determined the annual bonus amounts, if any, that will be awarded our named executive officers for 2019. We expect the Compensation Committee to assess 2019 performance and determine the 2019 annual bonus awards for our executive officers on or about August 2020. Once such annual bonus amounts, if any, have been determined, we will, in accordance with Securities and Exchange Commission rules and regulations, file a Current Report on Form 8-K or otherwise disclose the 2019 annual bonus amounts within four business days after the Compensation Committee has assessed 2019 performance and determined the 2019 annual bonus awards for our named executive officers.

Equity-Based Incentives

Salaries and bonuses are intended to compensate our executive officers for short-term performance. We also have adopted an equity incentive program intended to reward longer-term performance and to help align the interests of our named executive officers with those of our stockholders. We believe that long-term performance is achieved through an ownership culture that rewards performance by our named executive officers through the use of equity incentives. Our equity incentive plan has been established to provide our employees, including our named executive officers, with incentives to help align those employees' interests with the interests of our stockholders.

When making equity-award decisions, the Compensation Committee considers market data, the grant size, the forms of long-term equity compensation available to it under our existing plans and the status of previously granted awards. The amount of equity incentive compensation granted reflects the executives' expected contributions to our future success. Existing ownership levels are not a factor in award determination, as the Compensation Committee does not want to discourage executives from holding significant amounts of our stock.

Future equity awards that we make to our named executive officers will be driven by our sustained performance over time, our named executive officers' ability to impact our results that drive stockholder value, their level of responsibility, their potential to fill roles of increasing responsibility, and competitive equity award levels for similar positions in comparable companies. Equity forms a key part of the overall compensation for each executive officer and is evaluated each year as part of the annual performance review process and incentive payout calculation.

The amounts awarded to the named executive officers are based on the Compensation Committee's subjective determination of what is appropriate to incentivize the executives. Generally, the grants to named executive officers vest over: (i) a four-year period with 25% vesting on each anniversary of the grant date, or (ii) a four-year period with 1/4 of the shares vesting on the first anniversary of the applicable vesting commencement date, and 1/48 of the shares vesting thereafter on a monthly basis. All equity awards to our employees, including named executive officers, and to directors have been granted and reflected in our financial statements, based upon the applicable accounting guidance, with the exercise price equal to the fair market value of one share of common stock on the grant date.

In April 2019, the Compensation Committee determined to grant to Dr. Ji and Mr. Shao a long-term equity based incentive in the form of options to purchase 1,500,000 shares of our common stock and 200,000 shares of our common stock, respectively. The Compensation Committee considered the competitive market analyses provided by Compensia in 2018 and 2019 and other data, including the fact that no annual bonuses were awarded to Dr. Ji or Mr. Shao for 2018, in determining the number of options granted to our named executive officers in April 2019. It is our view that option based awards best align with the interest of our stockholders. In addition, in June 2019, Scilex Holding Company granted to Dr. Ji and Mr. Shao an option to purchase 3,016,652 and 200,000 shares of its common stock, respectively. Dr. Ji's option to purchase shares of Scilex Holding Company provided that Dr. Ji would forego and relinquish his right to receive the option if it was not approved by our stockholders. Our stockholders approved the grant of the option at the annual meeting of stockholders held on September 20, 2019. The equity awards granted by us and Scilex Holding Company to our named executive officers in 2019 are set forth in the 2019 Summary Compensation Table and Grants of Plan-Based Awards During Fiscal Year 2019 table contained herein.

In order to encourage a long-term perspective and to encourage key employees to remain with us, our stock options typically have annual vesting over a four-year period and a term of ten years. Generally, vesting ends upon termination of services and exercise rights of vested options cease three months after termination of services. Prior to the exercise of an option, the holder has no rights as a stockholder with respect to the shares subject to such option, including voting rights and the right to receive dividends or dividend equivalents.

Benefits Programs

We design our benefits programs to be both affordable and competitive in relation to the market while conforming with local laws and practices. We monitor the market and local laws and practices and adjust our benefits programs as needed. We design our benefits programs to provide an element of core benefits and, to the extent possible, offer options for additional benefits, be tax-effective for employees in each country and balance costs and cost sharing between us and our employees.

Timing of Equity Awards

Only the Compensation Committee may approve stock option grants to our executive officers. Stock options are generally granted at meetings of the Compensation Committee. On limited occasions, a grant may be made pursuant to a unanimous written consent of the Compensation Committee, which occurs primarily for the purpose of approving a compensation package for a newly hired or promoted executive. The exercise price of a newly granted option is the closing price of our common stock on the date of grant.

Executive Equity Ownership

We encourage our executives to hold a significant equity interest in our company. However, we do not have specific share retention and ownership guidelines for our executives.

Hedging Policy

Our Insider Trading and Window Period Policy prohibits our directors, officers and employees, and their family members, from engaging in hedging transactions involving our securities.

Consideration of Advisory Votes to Approve the Compensation of our Named Executive Officers

We value the opinions of our stockholders, including as expressed through advisory votes to approve the compensation of our named executive officers ("Say-on-Pay Votes"). In our most recent Say-On-Pay Vote, conducted at our 2018 annual meeting of stockholders, held on August 24, 2018, our stockholders approved the compensation of our named executive officers on an advisory basis, with approximately 90% of the votes cast in favor of the fiscal 2017 compensation of our named executive officers. In setting fiscal 2019 compensation, we considered the outcome of the Say-on-Pay Vote during our 2018 annual meeting of stockholders and will continue to consider the outcome of future Say-on-Pay Votes, as well as stockholder feedback received throughout the year, when making compensation decisions for our executive officers.

Effect of Accounting and Tax Treatment on Compensation Decisions

In the review and establishment of our compensation programs, we consider the anticipated accounting and tax implications to us and our executives.

Generally, Section 162(m) of the Code disallows public companies a tax deduction for federal income tax purposes of compensation in excess of $1 million paid to their chief executive officer and certain other specified officers in any taxable year. For tax years ending prior to December 31, 2017, compensation in excess of $1 million could only be deducted if it was "performance-based compensation" within the meaning of Section 162(m) of the Code or qualified for one of the other exemptions from the deduction limit. The exemption from Section 162(m) of the Code's deduction limit for performance-based compensation has been repealed, effective for taxable years beginning after December 31, 2017, such that compensation paid to our covered officers (which now also includes our Chief Financial Officer) in excess of $1 million will generally not be deductible unless it qualifies for transition relief applicable to certain arrangements in place as of November 2, 2017. We seek to maintain flexibility in compensating our executives in a manner designed to promote our corporate goals and, therefore, while we are mindful of the benefit of the full deductibility of compensation, our Compensation Committee has not adopted a policy requiring that any or all compensation to be deductible. Our Compensation Committee may authorize compensation payments that are not fully tax deductible if we believe that such payments are appropriate to attract and retain executive talent or meet other business objectives.

Role of Executives in Executive Compensation Decisions

The Board and our Compensation Committee generally seek input from our Chief Executive Officer, Dr. Ji, when discussing the performance of, and compensation levels for, executives other than himself. The Compensation Committee also works with Dr. Ji and our Chief Financial Officer to evaluate the financial, accounting, tax and retention implications of our various compensation programs. Neither Dr. Ji nor any of our other executives participate in deliberations relating to his compensation.

Compensation Risk Management

We have considered the risk associated with our compensation policies and practices for all employees, and we believe we have designed our compensation policies and practices in a manner that does not create incentives that could lead to excessive risk taking that would have a material adverse effect on us for the following reasons:

- We structure our compensation to consist of base salary, variable pay, equity-based pay and benefits. The base portion of compensation is designed to provide a steady income regardless of our stock price performance so that executives do not feel pressured to focus exclusively on stock price performance to the detriment of other important business measures. Our variable pay and equity-based pay programs are designed to reward both short- and long-term corporate performance. For short-term performance, our variable pay programs are designed to motivate employees to achieve overall goals. For long-term performance, our stock option awards generally vest over four years and are only valuable if our stock price increases over time. We believe that these variable elements of compensation are a sufficient percentage of overall compensation to motivate executives to produce superior short- and long-term corporate results, while the fixed element is also sufficiently high that the executives are not encouraged to take unnecessary or excessive risks in doing so.
- Our bonus program has been structured around attainment of overall corporate goals for the past several years and we have seen no evidence that it encourages unnecessary or excessive risk taking.

SUMMARY COMPENSATION TABLE

The following table provides certain summary information concerning compensation awarded to, earned by or paid to each person who served as our principal executive officer at any time during fiscal year 2019 and each person who served as our principal financial officer at any time during fiscal year 2019 (collectively, the "named executive officers").

Name and Principal Position	Year	Salary($)	Bonus ($)[1]	Option Awards ($)[2]	All Other Compensation ($)[3]	Total($)
Henry Ji, Ph.D.	2019	781,400 [4]	*	7,320,203	12,790	8,114,393
Chairman of the Board, Chief	2018	670,000	—	3,832,500	—	4,502,500
Executive Officer and President	2017	600,000	—	945,000	—	1,545,000
Jiong Shao	2019	450,000	*	776,220	6,174	1,232,394
Executive Vice President and	2018	356,250	—	2,993,000	—	3,349,250
Chief Financial Officer[5]						

(1) Does not include for 2019 the amount of any annual bonuses that may be awarded to our named executive officers as the Compensation Committee has not, as of the date of the filing of this Annual Report on Form 10-K, yet determined the annual bonus amounts, if any, that will be awarded our named executive officers for 2019. See "-Elements of Compensation-Variable Pay-2019 Bonuses" above for a discussion of the target bonus amounts for each named executive officer for fiscal year 2019. We expect the Compensation Committee to assess 2019 performance and determine the 2019 annual bonus awards for our executive officers on or about August 2020. Dr. Ji may also be entitled to receive a bonus from Scilex Holding Company in connection with his role as it Executive Chairperson; however, the amount of any such bonus has not yet been determined. Once such annual bonus amounts, if any, have been determined, we will, in accordance with Securities and Exchange Commission rules and regulations, file a Current Report on Form 8-K or otherwise disclose the 2019 annual bonus amounts within four business days after the Compensation Committee has assessed 2019 performance and determined the 2019 annual bonus awards for our named executive officers.

(2) These amounts represent the aggregate grant date fair value of awards for grants of options to purchase shares of our common stock and, for 2019, options to purchase shares of Scilex Holding Company, to each named executive officer in the relevant fiscal year, computed in accordance with FASB ASC Topic 718. The dollar amounts listed do not necessarily reflect the dollar amounts of compensation actually realized or that may be realized by our named executive officers. For a detailed description of the assumptions used for purposes of determining grant date fair value, see Note 11 to the financial statements included in this Annual Report on Form 10-K. These amounts represent the aggregate grant date fair value of awards for grants of options and warrants to each named executive officer in the relevant fiscal year, computed in accordance with FASB ASC Topic 718.

(3) Comprised of payments for executive disability benefits.

(4) Comprised of $670,000 of salary paid by us and $111,400 of salary payable by Scilex Holding Company for Dr. Ji's role as its Executive Chairperson. This compensation payable by Scilex Holding Company was approved by our stockholders at the annual meeting of stockholders held on September 20, 2019.

(5) Mr. Shao's employment with the Company commenced in March 2018.

GRANTS OF PLAN-BASED AWARDS DURING FISCAL YEAR 2019

The following table shows for fiscal year 2019, certain information regarding grants of plan-based awards to our named executive officers:

Named Executive Officer[1]	Grant Date	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise Price Per Share ($ / Share)	Grant Date Fair Value of Option Awards ($)[1]
Henry Ji, Ph.D.	4/14/2019	1,500,000	3.78	4,530,000
	9/20/2019 [2]	3,016,652	1.16	2,790,203
Jiong Shao	4/14/2019	200,000	3.78	604,000
	6/13/2019 [2]	200,000	1.16	171,820

(1) The amounts shown in this column do not reflect dollar amounts actually received by our named executive officers. Instead, these amounts represent the aggregate grant date fair value of the stock option awards determined in accordance with FASB ASC Topic 718. The valuation assumptions used in determining the amounts are described in Note 11 to our financial statements included in this Annual Report on Form 10-K. Our named executive officers will only realize compensation to the extent the trading price of our common stock is greater than the exercise price of such stock options on the date the options are exercised.

(2) Represents options granted by our subsidiary, Scilex Holding Company.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

The following table sets forth information for the named executive officers regarding the number of shares subject to both exercisable and unexercisable stock options, as well as the exercise prices and expiration dates thereof, as of December 31, 2019. Except for the options set forth in the table below, no other equity awards were held by any our named executive officers as of December 31, 2019:

	Option Award					
Name	Option Grant Date	Vesting Commencement Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Earned Options(#) Unexercisable	Option Exercise Price ($)[1]	Option Expiration Date
Henry Ji, Ph.D.	2/6/2012 (2)	1/1/2012	10,000	—	4.00	2/6/2022
	10/29/2013 (3)	10/1/2013	101,000	—	8.40	10/29/2023
	10/7/2014 (3)	10/7/2014	100,000	—	4.32	10/7/2024
	2/24/2015 (4)	2/24/2015	80,000	—	12.78	2/24/2025
	2/24/2015 (3)	2/24/2015	80,000	—	12.78	2/24/2025
	3/11/2016 (3)	3/11/2016	93,750	6,250	5.79	3/11/2026
	8/12/2016 (3)	8/12/2016	250,000	50,000	6.52	8/12/2026
	9/14/2017 (3)	9/14/2017	421,875	328,125	1.80	9/14/2027
	5/17/2018 (3)	5/17/2018	296,875	453,125	7.20	5/17/2028
	4/14/2019 (3)	4/14/2019	—	1,500,000	3.78	4/14/2029
	6/6/2019 (3)(5)	3/18/2019	—	3,016,652	1.16	6/6/2029
Jiong Shao	3/16/2018 (3)	3/16/2018	87,500	112,500	7.75	3/16/2028
	3/16/2018 (6)	3/16/2018	—	300,000	7.75	3/16/2028
	11/26/2018 (3)	11/26/2018	27,083	72,917	3.57	11/26/2028
	4/14/2019 (3)	4/14/2019	—	200,000	3.78	4/14/2029
	6/13/2019 (5)	3/18/2019	—	200,000	1.16	6/13/2029

(1) Represents the fair market value of a share of our common stock, as determined by the Board, on the option's grant date.

(2) Shares subject to the option vested 25% on each one year anniversary of the Vesting Commencement Date.

(3) Shares subject to the option vest and become exercisable over a four-year period, with 1/4 of the shares vesting on the first anniversary of the Vesting Commencement Date, and 1/48 of the shares vesting following each one-month period of the participant's continued employment or service with the Company thereafter.

(4) 62.5% of the shares subject to the option vested over a four-year period, with 1/4 of the shares vesting on the first anniversary of the Vesting Commencement Date, and 1/48 of the shares vesting following each one-month period of the participant's continued employment or service with the Company thereafter. The remaining 37.5% of the shares subject to the option vested upon the consummation of a certain strategic transaction.

(5) Represents options granted by our subsidiary, Scilex Holding Company.

(6) This option will vest, subject to Mr. Shao's continued employment with the Company, upon the date our common stock becomes listed on The Stock Exchange of Hong Kong Limited.

OPTION EXERCISES AND STOCK VESTED

There were no stock options exercised by our named executive officers during the fiscal year ended December 31, 2019.

PENSION BENEFITS, NONQUALIFIED DEFINED CONTRIBUTION AND OTHER NONQUALIFIED DEFERRED COMPENSATION

No pension benefits were paid to any of our named executive officers during fiscal 2019. We do not currently sponsor any non-qualified defined contribution plans or non-qualified deferred compensation plans.

Employment, Severance, Separation and Change in Control Agreements

Chief Executive Officer Amended and Restated Employment Agreement

On May 9, 2017, we entered into an Amended and Restated Employment Agreement (the "Restated Agreement") with Dr. Ji. Pursuant to the Restated Agreement, Dr. Henry Ji will continue to serve as our President and Chief Executive Officer for an initial term of three years commencing on May 9, 2017. Following this initial three year term, the Restated Agreement shall renew automatically for additional 12 month terms unless either we or Dr. Ji provide written notice of non-renewal at least three months in advance of the expiration of the then-current term. The Restated Agreement supersedes and replaces a prior employment agreement with Dr. Ji, dated September 21, 2012, as amended on October 18, 2012.

Pursuant to the Restated Agreement, Dr. Ji shall (i) receive an annual base salary (the "Annual Base Salary") of $600,000, as may be adjusted from time to time; (ii) be eligible to participate in an annual incentive program, with a target annual bonus incentive equal to 55% of his then-current Annual Base Salary (the "Annual Bonus"); and (iii) receive employee benefits, paid personal leave and expense reimbursement in accordance with our policies. In addition, Dr. Ji's performance will be reviewed by the Board at least annually, and his Annual Base Salary, target Annual Bonus and any other compensation will be subject to adjustment by the Board, provided that Dr. Ji's Annual Base Salary and target Annual Bonus may not be adjusted downward.

Pursuant to the Restated Agreement, we have the right to terminate Dr. Ji's employment at any time with or without "cause" (as defined in the Restated Agreement). In addition, Dr. Ji may resign with or without "good reason" (as defined in the Restated Agreement) upon thirty days' written notice to us. Under each such circumstance, Dr. Ji will be entitled to receive any accrued but unpaid base salary as of the date of termination or resignation, any expenses owed to him and any amount accrued and arising from his participation in, or vested benefits accrued under, any employee benefit plans, programs or arrangements, including any 401(k), profit sharing or pension plan (collectively, the "Termination Payments").

In the event that Dr. Ji's employment is terminated by us without "cause" or by our non-renewal of the term of the Restated Agreement, or by Dr. Ji for "good reason," in either case outside of a Change of Control Window (as defined below), then, subject to Dr. Ji's timely execution and non-revocation of a release in favor of us, Dr. Ji will be entitled to receive the following: (i) the Termination Payments; (ii) an amount equal to his then-current Annual Base Salary, payable in a lump sum; (iii) an amount equal to his pro-rata then-current target Annual Bonus, payable in a lump sum; (iv) 12 months of health insurance benefits for Dr. Ji and for his eligible dependents who were covered under our health insurance plans as of the date his employment was terminated; and (v) one year of accelerated vesting of Dr. Ji's then-outstanding awards of equity compensation, with performance-criteria deemed satisfied at target.

If Dr. Ji's employment is terminated without "cause" or by our non-renewal of the term of the Restated Agreement, or by Dr. Ji for "good reason," in either case during the period commencing three months prior to a Change of Control and ending 12 months after a Change of Control (as defined in the Restated Agreement) (the "Change of Control Window"), then, subject to Dr. Ji's timely execution and non-revocation of a release in favor of us, Dr. Ji will be entitled to receive the following: (i) the Termination Payments; (ii) an amount equal to twice his then-current Annual Base Salary, payable in a lump sum; (iii) an amount equal to twice his pro-rata then-current target Annual Bonus, payable in a lump sum; (iv) 24 months of health insurance benefits for Dr. Ji and for his eligible dependents who were covered under our health insurance plans as of the date his

employment was terminated; and (v) accelerated vesting of Dr. Ji's then-outstanding awards of equity compensation, with performance-criteria deemed satisfied target.

Employment Agreements with Other Executive Officers and Former Executive Officers

Jiong Shao

On March 16, 2018, we entered into an offer letter with Mr. Shao. Pursuant to the offer letter, Mr. Shao's annualized salary is $450,000, as may be adjusted from time to time, and he will be eligible to receive an annual performance bonus of up to 35% of his base salary. Pursuant to the offer letter, we granted Mr. Shao an option to purchase 200,000 shares of our common stock (under our Amended and Restated 2009 Stock Incentive Plan), which will vest, subject to Mr. Shao's continued employment with the Company, over a four year period, with 25% of the shares subject to the option vesting on the first anniversary of the grant date and 1/48th of the shares subject to the option vesting each month thereafter. We also granted Mr. Shao a second option to purchase 300,000 shares of our common stock under the Plan, which will vest, subject to Mr. Shao's continued employment with the Company, upon the date our common stock becomes listed on The Stock Exchange of Hong Kong Limited.

POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

Other than the provisions of the executive severance benefits to which our named executive officers would be entitled to at December 31, 2019 (the last trading day of the year) as set forth above, we have no liabilities under termination or change in control conditions. We do not have a formal policy to determine executive severance benefits. Each executive severance arrangement is negotiated on an individual basis.

The tables below estimate the current value of amounts payable to our named executive officers in the event that a termination of employment occurred on December 31, 2019 (the last trading day of the year). The closing price of our common stock, as reported on the Nasdaq Capital Market, was $3.38 on December 31, 2019. The following tables exclude certain benefits, such as accrued vacation, that are available to all employees generally. The actual amount of payments and benefits that would be provided can only be determined at the time of a change in control and/or the named executive officer's qualifying separation from the Company.

Henry Ji, Ph.D.

	By Sorrento Without Cause or by Dr. Ji for Good Reason or Sorrento's Non-Renewal Outside of Change of Control Window		By Sorrento Without Cause or by Dr. Ji for Good Reason or Sorrento's Non-Renewal During Change of Control Window	
Cash Payments	$ 781,400		$ 1,562,800	
Continuation of Benefits	26,859		53,718	
Value of Option Shares Accelerated	296,250	(1)	518,438	(2)
Total Cash Benefits and Payments	$ 1,098,636		$ 2,362,122	

(1) Consists of the value of one year of vesting of the in-the-money stock options held by Dr. Ji as of December 31, 2019, the vesting of which would be accelerated.

(2) Consists of the value of 100% of the in-the-money stock options held by Dr. Ji as of December 31, 2019, the vesting of which would be accelerated.

Jiong Shao

Mr. Shao's offer letter does not provide for payments or benefits upon termination or a change in control.

DIRECTOR COMPENSATION

The following table sets forth summary information concerning the total compensation paid to our non-employee directors in 2019 for services to our company:

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)[1]	All Other Compensation ($)	Total ($)
Dorman Followwill	83,093	211,400	—	294,493
Kim D. Janda, Ph.D.	97,250	211,400	24,000	332,650
Edgar Lee	—	215,250	—	215,250
David Lemus	80,000	211,400	—	291,400
Jaisim Shah	65,750	10,576,756 (2)	328,630 (3)	10,971,136
Dr. Robin L. Smith	2,366	222,750	—	225,116
Yue Alexander Wu, Ph.D.	90,000	211,400	—	301,400

(1) These amounts represent the aggregate grant date fair value of awards for grants of options to each listed director for the fiscal year ended December 31, 2019, computed in accordance with FASB ASC Topic 718. These amounts do not represent the actual amounts paid to or realized by the directors during the fiscal year ended December 31, 2019. The value as of the grant date for stock options is recognized over the number of months of service required for the stock option to vest in full. For a detailed description of the assumptions used for purposes of determining grant date fair value, see Note 11 to the financial statements included in this Annual Report on Form 10-K. As of December 31, 2019, our non-employee directors held options to purchase the following number of shares of our common stock: Mr. Followwill - 140,000; Dr. Janda - 272,400; Mr. Lee - 75,000; Mr. Lemus - 140,000; Mr. Shah - 445,000; Dr. Smith - 75,000; and Dr. Wu - 175,000.

(2) Includes the grant date fair value of an option to purchase 12,066,608 shares of common stock of Scilex Holding Company that was granted to Mr. Shah by Scilex Holding Company on June 6, 2019.

(3) Comprised solely of salary paid by Scilex Holding Company to Mr. Shah in connection with his service as President and Chief Executive Officer of Scilex Holding Company.

Outside Director Compensation Policy

Our outside director compensation policy provides that each non-executive director is entitled to receive a $55,000 annual cash retainer, with the amount being increased to $78,000 for any Lead Director and $100,000 for any Board chairman. Further, the chairman of each of our Audit, Compensation and Transaction Committees receives an additional annual cash retainer of $25,000. Other members of our Audit, Compensation and Transaction Committees receive an additional cash retainer of $10,000. In addition, each non-executive director will be entitled to receive an annual grant of a stock option to purchase 70,000 (subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions) shares of common stock, which vests monthly over a period of 12 months from the date of grant, subject to continued service through each vesting date. Additionally, we reimburse each outside director for reasonable travel expenses related to such director's attendance at Board and committee meetings.

Other Compensation

We intend to provide benefits and perquisites for our named executive officers at levels comparable to those provided to other executive officers in our industry. Our Board or any applicable committee thereof, in its discretion, may revise, amend or add to the benefits and perquisites of any named executive officer as it deems it advisable and in the best interest of the Company and our stockholders.

Compensation Committee Interlocks and Insider Participation

Our Compensation Committee consists of two directors, each of whom is a non-employee director: Mr. Followwill and Dr. Wu. Dr. Wu serves as the Chairperson of the Compensation Committee. Prior to March 18, 2019, our Compensation Committee was comprised of Messrs. Followwill and Shah and Dr. Wu. During 2019, none of Messrs. Followwill or Shah or Dr. Wu was an officer or employee of ours, was formerly an officer of ours or had any relationship requiring disclosure by us under Item 404 of Regulation S-K, except with respect to Mr. Shah's relationship to Semnur Pharmaceuticals, Inc. as disclosed under the heading "Transactions with Related Persons- Semnur Pharmaceuticals, Inc. Acquisition" in Item 13 of this Annual Report on Form 10-K. No interlocking relationship as described in Item 407(e)(4) of Regulation S-K exists between any of our

executive officers or Compensation Committee members, on the one hand, and the executive officers or compensation committee members of any other entity, on the other hand, nor has any such interlocking relationship existed in the past.

Compensation Committee Report

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K of the SEC's rules and regulations with management and, based on such review and discussions, the Compensation Committee recommended to the Board of Directors that the Compensation Discussion and Analysis be included in this Annual Report on Form 10-K.

Compensation Committee

Dr. Yue Alexander Wu
Mr. Dorman Followwill

The *foregoing Compensation Committee Report shall not be deemed to be "soliciting material," deemed "filed" with the SEC or subject to the liabilities of Section 18 of the Exchange Act. Notwithstanding anything to the contrary set forth in any of the Company's previous filings under the Securities Act of 1933, as amended, or the Exchange Act that might incorporate by reference future filings, including this Annual Report on Form 10-K, in whole or in part, the foregoing Compensation Committee Report shall not be incorporated by reference into any such filings.*

Pay Ratio Disclosure

As of the date of the filing of this Annual Report on Form 10-K, the pay ratio for Dr. Ji, our Chief Executive Officer, is not calculable. The pay ratio is not calculable as the Compensation Committee has not, as of the date of the filing of this Annual Report on Form 10-K, yet determined the annual bonus amounts, if any, that will be awarded our Chief Executive Officer for 2019. We expect the Compensation Committee to assess 2019 performance and determine the 2019 annual bonus award and actual total compensation for our Chief Executive Officer on or about August 2020. Once such annual bonus amount, if any, has been determined, we will, in accordance with Securities and Exchange Commission rules and regulations, file a Current Report on Form 8-K or otherwise disclose the pay ratio within four business days after the Compensation Committee has assessed 2019 performance and determined the 2019 annual bonus awards and actual total compensation for our Chief Executive Officer.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table sets forth information as of February 14, 2020, with respect to the beneficial ownership of shares of our common stock by:

- each person or group known to us to be the beneficial owner of more than five percent of our common stock;
- each of our directors;
- each of our named executive officers; and
- all of our current directors and executive officers as a group.

This table is based upon information supplied by officers, directors and principal stockholders and a review of Schedules 13D and 13G, if any, filed with the SEC. Other than as set forth below, we are not aware of any other beneficial owner of more than five percent of our common stock as of February 14, 2020. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership is based on 181,340,344 shares of common stock outstanding as of February 14, 2020, adjusted as required by rules promulgated by the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options and warrants that are either immediately exercisable or exercisable on or before April 14, 2020, which is 60 days after February 14, 2020. These shares are deemed to be outstanding and beneficially owned by the person holding those options for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Unless otherwise noted below, the address of each beneficial owner listed in the table is c/o Sorrento Therapeutics, Inc., 4955 Directors Place, San Diego, California 92121.

	Beneficial Ownership of Common Stock		
Name of Beneficial Owner	**Number of Shares**		**Percentage of Class**
Named Executive Officers and Directors:			
Dr. Henry Ji, Chairman of the Board, President and Chief Executive Officer	6,306,625	(1)	3.4%
Jiong Shao, Executive Vice President and Chief Financial Officer	183,333	(2)	*
Dorman Followwill, Director	104,213	(3)	*
Dr. Kim Janda, Lead Independent Director	229,483	(4)	*
Edgar Lee, Director	18,750	(2)	*
David Lemus, Director	102,083	(2)	*
Jaisim Shah, Director	519,716	(5)	
Dr. Robin L. Smith, Director	38,750	(6)	*
Dr. Yue Alexander Wu, Director	142,083	(7)	*
All Current Officers and Directors as a Group (9 persons)	7,645,036	(8)	4.1%
5% Stockholders:			
Asia Pacific MedTech (BVI) Limited	15,317,632	(9)	8.4%
China In Shine Investment Limited	12,000,259	(10)	6.5%
Famous Sino Limited	10,590,722	(11)	5.8%

* Less than 1%.

(1) Comprised of (i) 2,045,807 shares of common stock held directly, (ii) 2,271,693 shares of common stock held in family trusts, of which Dr. Ji is a co-trustee with his wife Vivian Q. Zhang, (iii) 40,000 shares of common stock held directly by Dr. Ji's wife, and (iv) 1,949,125 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020. Each of Dr. Ji and Vivian Q. Zhang, while acting as co-trustees, have the power to act alone and have those actions binding on both trustees' and the trusts' assets, including voting and dispositive power over the shares of common stock held by the family trusts.

(2) Comprised solely of shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(3) Comprised of (i) 2,130 shares of common stock held directly, and (ii) 102,083 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(4) Comprised of (i) 3,000 shares of common stock held directly, and (ii) 226,483 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(5) Comprised of (i) 112,633 shares of common stock held directly, and (ii) 407,083 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(6) Comprised of (i) 20,000 shares of common stock held directly, and (ii) 18,750 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(7) Comprised of (i) 5,000 shares of common stock held directly, and (ii) 137,083 shares of common stock issuable pursuant to stock options exercisable within 60 days after February 14, 2020.

(8) Comprised of shares included under "Named Executive Officers and Directors".

(9) The indicated ownership is based on a Schedule 13G/A filed with the SEC by Asia Pacific MedTech (BVI) Limited ("Asia Pacific") on February 10, 2020. According to the Schedule 13G/A, as of December 31, 2019, the Asia Pacific holds directly 14,604,620 shares of common stock and warrants to purchase an aggregate of 713,012 shares of common stock. Nana Gu is the sole director and sole shareholder of Asia Pacific and may be deemed to have voting and dispositive power over the shares, the warrants and the convertible promissory note held by Asia Pacific. The principal business address of Asia Pacific and Miss Gu

is c/o Offshore Incorporations Limited, P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.

(10) The indicated ownership is based on a Schedule 13G/A filed with the SEC on February 10, 2020 by China In Shine Investment Limited ("China In Shine). According to the Schedule 13G/A, as of December 31, 2019, China In Shine holds directly 9,026,017 shares of common stock and warrants to purchase an aggregate of 2,974,242 shares. Chit Fung is the sole director of China In Shine and may be deemed to have voting and dispositive power over the shares, the warrants and the convertible promissory note held by China In Shine. The principal business address of China In Shine and Chit Fung is 18/F, Des Voeux Road West, Hong Kong.

(11) The indicated ownership is based on a Schedule 13G/A filed with the SEC on February 10, 2020 by Famous Sino Limited ("Famous Sino"). According to the Schedule 13G/A, as of December 31, 2019, Famous Sino holds directly 7,766,480 shares of common stock and warrants to purchase an aggregate of 2,824,242 shares of common stock. Guangze Wu is the sole director of Famous Sino and may be deemed to have voting and dispositive power over the shares, the warrants and the convertible promissory note held by Famous Sino. The principal business address of Famous Sino and Guangze Wu is Flat B, 1/F, Tower 1, Dynasty Court, No. 23 Old Peak Road, Hong Kong.

SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

The following table sets forth additional information with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2019. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders[1]	14,586,661	$ 4.36	7,146,200 [2]
Equity compensation plans not approved by security holders	—	—	—
Total	14,586,661	$ 4.36	7,146,200

(1) Comprised of the 2019 Stock Incentive Plan and Amended and Restated 2009 Stock Incentive Plan.

(2) Comprised solely of shares available for future issuance under the 2019 Plan.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Review, Approval or Ratification of Transactions with Related Persons

The Board conducts an appropriate review of and oversees all related party transactions on a continuing basis and reviews potential conflict of interest situations where appropriate. The Board has not adopted formal standards to apply when it reviews, approves or ratifies any related party transaction. However, the Board has followed the following standards: (i) all related party transactions must be fair and reasonable and on terms comparable to those reasonably expected to be agreed to with independent third parties for the same goods and/or services at the time they are authorized by the Board and (ii) all related

party transactions should be authorized, approved or ratified by the affirmative vote of a majority of the directors who have no interest, either directly or indirectly, in any such related party transaction.

Transactions with Related Persons

The following is a description of transactions or series of transactions since January 1, 2019, or any currently proposed transaction, to which we have been a party, in which the amount involved in the transaction or series of transactions exceeds $120,000 and in which any of our directors, executive officers or persons who we know held more than five percent of any class of our capital stock, including their immediate family members, had or will have a direct or indirect material interest, other than compensation arrangements that are described under Item 11 of this Annual Report on Form 10-K.

Semnur Pharmaceuticals, Inc. Acquisition

On March 18, 2019, we, for limited purposes, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Semnur Pharmaceuticals, Inc. Scilex Holding Company ("Scilex Holding"), Sigma Merger Sub, Inc., the prior wholly owned subsidiary of Scilex Holding ("Merger Sub"), and Fortis Advisors LLC, solely as representative of the holders of Semnur equity (the "Equityholders' Representative"). Pursuant to the Merger Agreement, Merger Sub merged with and into Semnur (the "Merger"), with Semnur surviving as a wholly owned subsidiary of Scilex Holding.

Immediately prior to the closing of the Merger, we and each of the other holders of outstanding shares of capital stock of Scilex Pharma, our majority-owned subsidiary, contributed each share of Scilex Pharma capital stock that we or it owned to Scilex Holding in exchange for one share of Scilex Holding common stock (the "Contribution"). In connection with the Contribution, we provided Scilex Holding with a loan with an initial principal amount of $16.5 million in the form of a note payable, which loan was used to fund the acquisition of Semnur. As a result of the Contribution, Scilex Pharma became a wholly-owned subsidiary of Scilex Holding and we became the owner of approximately 77% of Scilex Holding's issued and outstanding capital stock.

At the closing of the Semnur acquisition, Scilex Holding issued to the holders of Semnur's capital stock and options to purchase Semnur's common stock (collectively, the "Semnur Equityholders") upfront consideration with a value of approximately $70.0 million. The upfront consideration was comprised of the following: (a) a cash payment of approximately $15.0 million, and (b) $55.0 million of shares of Scilex Holding common stock (47,039,315 shares issued, 352,972 shares issuable and up to 99,190 shares issuable contingent upon such shares being release from escrow, valued at $1.16 per share) (the "Stock Consideration").

On August 7, 2019, Scilex Holding entered into an amendment to the Merger Agreement to provide that, following the consummation of Scilex Holding's first bona fide equity financing with one or more third-party financing sources on an arms' length basis with gross proceeds to Scilex Holding of at least $40.0 million, certain of the former Semnur Equityholders will be paid cash in lieu of: (a) the 352,972 shares of our common stock otherwise issuable to such Semnur Equityholders pursuant to the Merger Agreement, and (b) any shares that would otherwise be issued to such Semnur Equityholders upon release of shares held in escrow pursuant to the Merger Agreement, with such shares in each case valued at $1.16 per share.

A portion of the cash consideration otherwise payable to the Semnur Equityholders was set aside for expenses incurred by the Equityholders' Representative, and 4,749,095 shares of Scilex Holding common stock otherwise issuable to Semnur Equityholders were placed in escrow with a third party as security for the indemnification obligations of the Semnur Equityholders under the Merger Agreement, including in respect of breaches of representations and warranties of Semnur included in the Merger Agreement. The Semnur Equityholders that receive the Stock Consideration were required to sign an exchange and registration rights agreement with us (the "Exchange Agreement"), which is further described below.

Following the issuance of the Stock Consideration, our ownership in Scilex Holding was diluted to approximately 58% of Scilex Holding's issued and outstanding capital stock. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions contained therein, Scilex Holding also agreed to pay the Semnur Equityholders up to $280.0 million in aggregate contingent cash consideration based on the achievement of certain milestones, which is comprised of a $40.0 million payment that will be due upon obtaining the first approval of a New Drug Application of a Semnur product by the U.S. Food and Drug Administration (the "FDA") and additional payments that will be due upon the achievement of certain amounts of net sales of Semnur products as follows: (a) a $20.0 million payment upon the achievement of $100.0 million in cumulative net sales of a Semnur product, (b) a $20.0 million payment upon the achievement of $250.0 million in cumulative net sales of a Semnur product, (c) a $50.0 million payment upon the achievement of $500.0 million in cumulative net sales of a Semnur product, and (d) a $150.0 million payment upon the achievement of $750.0 million in cumulative net sales of a Semnur product.

Pursuant to the Exchange Agreement, and upon the terms and subject to the conditions contained therein, if within 18 months following the closing of the Merger (the "Merger Closing"), 100% of the outstanding equity of Scilex Holding has not been acquired by a third party and Scilex Holding has not entered into a definitive agreement with respect to, or otherwise consummated, a firmly underwritten offering of Scilex Holding capital stock on a major stock exchange that meets certain requirements and includes the Stock Consideration, then holders of the Stock Consideration may collectively elect to exchange, during the 60-day period commencing the date that is the 18 month anniversary of the Merger Closing (the "Share Exchange"), the Stock Consideration for shares of our common stock with a value of $55.0 million based on a price per share of our common stock equal to the greater of (a) the 30-day trailing volume weighted average price of one share of our common stock as reported on The Nasdaq Stock Market LLC as of the consummation of the Share Exchange and (b) $5.55 (subject to adjustment for any stock dividend, stock split, stock combination, reclassification or similar transaction).

Pursuant to the terms of the Exchange Agreement, and subject to the limitations contained therein, within 30 days following consummation of the Share Exchange (if it occurs at all), we agreed to prepare and file with the SEC a registration statement to enable the public resale on a delayed or continuous basis of the shares of our common stock issued in the Share Exchange (the "Registration Statement") and use our commercially reasonable efforts to maintain the effectiveness of such Registration Statement for up to three years thereafter. In the Exchange Agreement, we have also agreed to indemnify the applicable Semnur Equityholders and their affiliates for certain liabilities related to such Registration Statement, including certain liabilities arising under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Jaisim Shah, a member of our Board of Directors, was Semnur's Chief Executive Officer, a member of its Board of Directors and a stockholder of Semnur prior to the acquisition transaction.

Shah Assignment Agreement

Semnur is party to an Assignment Agreement with Shah Investor LP, pursuant to which Shah Investor LP assigned certain intellectual property to Semnur and Semnur agreed to pay Shah Investor LP a contingent quarterly royalty in the low-single digits based on quarterly net sales of any pharmaceutical formulations for local delivery of steroids by injection developed using such intellectual property, which would include SEMDEXA. Mahendra Shah, Ph.D., who has served on the board of directors of Scilex Holding since March 2019, is the managing partner of Shah Investor LP.

2018 Purchase Agreements and Indenture for Scilex Pharmaceuticals Inc.

On September 7, 2018, Scilex Pharmaceuticals Inc. ("Scilex Pharma") entered into purchase agreements (the "2018 Purchase Agreements") with certain investors (the "Purchasers") and us. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex Pharma, among other things, issued and sold to the Purchasers senior secured notes due 2026 (the "Scilex Notes") with an aggregate principal of $224.0 million for an aggregate purchase price of $140.0 million (the "Offering"). In connection with the Offering, Scilex Pharma also entered into an indenture governing the Scilex Notes (the "Indenture") with U.S. Bank National Association, as trustee (the "Trustee") and collateral agent (the "Collateral Agent"), and us. Pursuant to the Indenture, we agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex Pharma under the Indenture. The holders of the Scilex Notes will be entitled to receive quarterly payments of principal of the Scilex Notes equal to a percentage, in the range of 10% to 20% of the net sales of ZTlido® (lidocaine topical system) 1.8% for the prior fiscal quarter, beginning on February 15, 2019. Pursuant to the terms of the Indenture, the percentage of net sales payable and the aggregate principal amount due are subject to increase if certain conditions are not met.

Certain entities affiliated with Oaktree purchased $80 million aggregate principal amount of the Scilex Notes in the Offering. Mr. Lee was a Managing Director at Oaktree at the time of the Offering.

Oaktree Term Loan Agreement

On November 7, 2018, we and certain of our domestic subsidiaries (the "Guarantors") entered into that certain Term Loan Agreement, dated as of November 7, 2018, by and among the Company, the Guarantors, certain funds affiliated with Oaktree Capital Management, L.P. ("Oaktree" and such funds, the "Lenders") and the Oaktree Fund Administration, LLC, as administrative and collateral agent (the "Agent"), as administrative and collateral agent (the "Original Loan Agreement"), for an initial term loan of $100.0 million on November 7, 2018 (the "Initial Loan") and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019 and the satisfaction of certain customary conditions (the "Conditional Loan"). In connection with the Original Loan Agreement, we and the Guarantors entered into a Collateral Agreement with the Agent (the "Collateral Agreement"). The Collateral Agreement

provides that the Initial Loan and the Conditional Loan are secured by substantially all of our and the Guarantors' assets and a pledge of 100% of the equity interests in other entities that each of us and the Guarantors holds (subject to certain exceptions and other than equity interests held by us or a Guarantor in certain foreign subsidiaries, which is limited to 65% of such voting equity interests).

In connection with the Original Loan Agreement, on November 7, 2018, we issued to the Lenders warrants to purchase 6,288,985 shares of the Company's common stock (the "Initial Warrants"). The Initial Warrants have an exercise price per share of $3.28, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, are exercisable from May 7, 2019 through May 7, 2029 and are exercisable solely on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Initial Warrants, in which case the Initial Warrants shall also be exercisable on a cashless exercise basis.

On May 3, 2019, we, the Guarantors and the Lenders and the Agent entered into an amendment (the "First Amendment" and the Original Loan Agreement, as amended by the First Amendment the "Loan Agreement"). Under the terms of the First Amendment, among other things, on May 3, 2019, the Lenders loaned to us $20.0 million of the Conditional Loan in the form an additional term loan of $20.0 million on May 3, 2019 (the "Early Conditional Loan", and together, with the Initial Loan, the "Term Loans"), notwithstanding that the commercial and financial milestones had not occurred. The Initial Loan will mature on November 7, 2023. The Early Conditional Loan will mature on May 3, 2020. The Term Loans may be prepaid by us, in whole or in part at any time, subject to a prepayment fee. Upon any prepayment or repayment of all or a portion of the Term Loans, we have agreed to pay the Lenders an exit fee equal to 1.25% of the principal amount paid or prepaid amounting to approximately $1.5 million. The Loan Agreement provided that, in the event of an optional prepayment of all or any portion of the Term Loans prior to November 7, 2021, we would be obligated to pay a prepayment fee in an amount equal to the amount of interest that would have been paid on the principal amount of the Term Loans being prepaid for the period from and including the date of such prepayment to, but excluding, November 7, 2021, based on the interest rate in effect on the date of any such prepayment (the "Make-Whole Payment"), plus 3% of the principal amount of the Term Loans being so prepaid.

In connection with the First Amendment, on May 3, 2019, we issued to the Lenders warrants to purchase an aggregate of 1,333,304 shares of our common stock (the "2019 Warrants"). The 2019 Warrants have an exercise price per share of $3.94, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, are exercisable from November 3, 2019 through November 3, 2029 and are exercisable solely on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the 2019 Warrants, in which case the 2019 Warrants shall also be exercisable on a cashless exercise basis.

We pay Oaktree an annual fee of $100,000 for certain advisory services provided to our Board and an annual fee of $100,000 for certain advisory services provided to the Board of Directors of Scilex Holding Company.

On December 6, 2019, we, the Guarantors, the Lenders and the Agent entered into an amendment (the "Second Amendment") to the Loan Agreement. Under the terms of the Second Amendment, the Lenders agreed that, in the event of an optional prepayment of all or any portion of the Term Loans on or prior to March 31, 2020, the prepayment fee will be equal to 3% of the principal amount of the Term Loans being prepaid, and we will not be required to pay any Make-Whole Payment. Pursuant to the Second Amendment, we also agreed to certain financial milestones and to fund and maintain, in a blocked liquidity account, an amount equal to (i) $2.5 million, or (ii) $20.0 million upon the achievement by us of certain financial milestones; *provided*, that the amount required to be maintained in the blocked liquidity account will be $10.0 million if we make an optional prepayment of at least $50.0 million in principal amount of the Term Loans on or prior to March 31, 2020.

In connection with the Second Amendment, on December 6, 2019, we paid the Lenders certain fees of $1.2 million in the aggregate and issued to the Lenders warrants to purchase an aggregate of 2,000,000 shares of the Company's common stock (the "Warrants"). The Warrants have an exercise price per share of $3.26, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable from June 6, 2020 through June 6, 2030 and will be exercisable solely on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrants (the "Warrant Shares"), in which case the Warrants shall also be exercisable on a cashless exercise basis.

In connection with the Second Amendment, on December 6, 2019, we and the Lenders entered into an amendment (the "RRA Amendment" and, together with the Amendment and the Warrants, the "Transaction Documents") to that certain Registration Rights Agreement, dated as of November 7, 2018, as amended by that certain Amendment No. 1 to the Registration Rights Agreement, dated as of May 3, 2019, by and among us and the persons party thereto. Under the terms of the RRA Amendment, we agreed to file one or more registration statements with the SEC for the purpose of registering for resale the Warrant Shares by no later than the 45th day following the issuance of the Warrants.

In connection with the Second Amendment, on December 6, 2019, we and Oaktree entered into a letter agreement (the "Letter Agreement") pursuant to which we agreed that our Board would increase the number of members of our Board and, subject to the satisfaction of certain conditions, appoint Mr. Edgar Lee as a member of our Board. We also agreed that our Board will nominate Mr. Lee as a director at the 2020 annual meeting of our stockholders and at each subsequent annual meeting during the term of the Letter Agreement. In the event that Mr. Lee resigns as a director or otherwise refuses or is unable to serve as a director during the term of the Letter Agreement, Oaktree may designate a replacement director who will be independent of Oaktree, considered an independent director under the listing rules of The Nasdaq Stock Market LLC, is mutually agreed upon in writing by us and Oaktree and has a comparable amount of business experience to Mr. Lee. The Letter Agreement will terminate if, at any time, the aggregate principal amount of the Term Loans held by funds associated with Oaktree is $70.0 million or less.

Mr. Lee was a Managing Director at Oaktree, which is the manager of each of the Lenders, during each of the above transactions. In addition, Oaktree is the parent of OCM Investments LLC, which is the investment manager of each of the Lenders. Mr. Lee was the Chairman of the Board of Directors, Chief Executive Officer and Chief Investment Officer of Oaktree Strategic Income II, Inc., which is one of the Lenders, during each of the above transactions. Mr. Lee was the Chief Executive Officer and Chief Investment Officer for Oaktree Specialty Lending Corporation, which is the sole owner and managing member of OCSL SRNE, LLC, which is one of the Lenders, during each of the above transactions.

Indemnification Agreements with Directors and Executive Officers

We have entered into indemnity agreements with certain directors, officers and other key employees of ours under which we agreed to indemnify those individuals under the circumstances and to the extent provided for in the agreements, for expenses, damages, judgments, fines, settlements and any other amounts they may be required to pay in actions, suits or proceedings which they are or may be made a party or threatened to be made a party by reason of their position as a director, officer or other agent of ours, and otherwise to the fullest extent permitted under Delaware law and our Bylaws. We also have an insurance policy covering our directors and executive officers with respect to certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, or otherwise. We believe that these provisions and insurance coverage are necessary to attract and retain qualified directors, officers and other key employees.

Board Independence

Our Board is responsible for establishing corporate policies and for our overall performance, although it is not involved in our day-to-day operations. Our Board consults with our counsel to ensure that our Board's determinations are consistent with all relevant securities and other laws and regulations regarding the definition of "independent," including those set forth in the rules of The Nasdaq Stock Market LLC, as in effect from time to time. Consistent with these considerations, after review of all relevant transactions or relationships between each director, or any of his or her family members, us, our senior management and our independent registered public accounting firm, our Board has determined that all of our directors, other than Dr. Ji and Mr. Shah, are independent.

Item 14. Principal Accounting Fees and Services.

The information required by this item regarding principal accounting fees and services will be included in our 2019 Proxy Statement and is incorporated herein by reference.

	Year Ended December 31	
	2019	**2018**
Audit Fees (1)	$ 3,109,209	$ 2,213,739
Audit-Related Fees	—	—
Tax Fees (2)	778,648	827,152
All Other Fees	—	—
Total Fees	$ 3,887,857	$ 3,040,891

(1) Audit fees consisted of fees for services rendered in connection with the annual audit of our consolidated financial statements, quarterly reviews of financial statements included in our quarterly reports on Form 10-Q, and the audit of internal control over financial reporting. Audit fees also consisted of services provided in connection with issuances of consents

included in registration statements, standalone audits, consultation on accounting matters, and SEC registration statement services.

(2) Tax services consisted of fees for tax consultation and tax compliance services.

Audit Committee's Pre-Approval Policies and Procedures

The Audit Committee has adopted a policy for the pre-approval of audit and non-audit services rendered by our independent registered public accounting firm. The policy generally pre-approves specified services in the defined categories of audit services, audit-related services and tax services up to specified amounts. Pre-approval may also be given as part of the Audit Committee's approval of the scope of the engagement of the independent auditors or on an individual explicit case-by-case basis before the independent registered public accounting firm are engaged to provide each service. The pre-approval of services may be delegated to one or more of the Audit Committee members, but the decision must be reported to the full Audit Committee at its next scheduled meeting. By the adoption of this policy, the Audit Committee has delegated the authority to pre-approve services to the Chairperson of the Audit Committee, subject to certain limitations.

The Audit Committee has determined that the rendering of services by Deloitte & Touche LLP other than audit services is compatible with maintaining the principal accounting firm's independence.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a)(1) Financial Statements

Reference is made to the Index to Consolidated Financial Statements of Sorrento Therapeutics, Inc. appearing on page F-1 of this Annual Report on Form 10-K.

(a)(2) Financial Statement Schedules

Schedule II – Valuation of Qualifying Accounts

All other schedules not listed above have been omitted because of the absence of conditions under which they are required, or because the required information is included in the consolidated financial statements or the notes thereto.

(a)(3) Exhibits

Exhibit No.	Description
2.1*	Agreement and Plan of Merger between Sorrento Therapeutics, Inc. and IgDraSol, Inc. dated September 9, 2013 (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the SEC on September 11, 2013).
2.2*	Stock Purchase Agreement, dated November 8, 2016, by and among Sorrento Therapeutics, Inc., Scilex Pharmaceuticals Inc., the stockholders of Scilex Pharmaceuticals Inc. party thereto and SPI Shareholders Representative, LLC, as representative of the stockholders of Scilex Pharmaceuticals Inc. party thereto (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 8, 2016).
2.3*	Share Purchase Agreement, dated April 27, 2017, by and among Sorrento Therapeutics, Inc., TNK Therapeutics, Inc., Virttu Biologics, Limited, the shareholders of Virttu Biologics Limited and Dayspring Ventures Limited as representative of the shareholders of Virttu Biologics Limited (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the SEC on April 28, 2017).
2.4	Amendment No. 1 to Share Purchase Agreement, effective April 27, 2018, by and among Sorrento Therapeutics, Inc., TNK Therapeutics, Inc. and Dayspring Ventures Limited, as representative of the shareholders of Virttu Biologics Limited (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2018).

2.5*	Agreement and Plan of Merger, dated as of March 18, 2019, by and among Sorrento Therapeutics, Inc., Semnur Pharmaceuticals, Inc., Scilex Holding Company, Sigma Merger Sub, Inc. and Fortis Advisors LLC, solely as the Equityholders' Representative (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the SEC on March 22, 2019).
2.6	Amendment No. 1 to Agreement and Plan of Merger, dated as of August 7, 2019, by and between Scilex Holding Company and Fortis Advisors LLC, solely as the Equityholders' Representative (incorporated by reference to Exhibit 2.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 12, 2019).
3.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on May 15, 2013).
3.2	Certificate of Amendment of the Restated Certificate of Incorporation of Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the SEC on August 1, 2013).
3.3	Amended and Restated Bylaws of Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 3.3 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 15, 2019).
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on October 23, 2009).
4.2	Voting Agreement, dated as of April 29, 2016, by and between Sorrento Therapeutics, Inc. and Yuhan Corporation (incorporated by reference to Exhibit 4.12 to the Registrant's Registration Statement on Form S-3 filed with the SEC on June 29, 2016).
4.3	Registration Rights Agreement, dated November 8, 2016, by and among Sorrento Therapeutics, Inc. and the persons party thereto (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 8, 2016).
4.4	Warrant Agreement, dated November 23, 2016, issued to Hercules Capital, Inc. (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 29, 2016).
4.5	Registration Rights Agreement, dated April 27, 2017, by and among Sorrento Therapeutics, Inc. and the persons party thereto (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on April 28, 2017).
4.6	Form of Common Stock Purchase Warrant issued to investors pursuant to the Securities Purchase Agreement, dated as of December 11, 2017, by and among Sorrento Therapeutics, Inc. and the purchasers identified on Schedule A thereto (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the SEC on December 21, 2017).
4.7	Registration Rights Agreement, dated December 21, 2017, by and among Sorrento Therapeutics, Inc. and the purchasers identified on Schedule A thereto (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the SEC on December 21, 2017).
4.8	Form of Common Stock Purchase Warrant issued to investors pursuant to the Securities Purchase Agreement, dated as of June 13, 2018, by and among Sorrento Therapeutics, Inc. and the purchasers identified on Schedule A thereto (incorporated by reference to Exhibit 4.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2018).
4.9	Registration Rights Agreement, dated June 13, 2018, by and among Sorrento Therapeutics, Inc. and the purchasers identified on Schedule A thereto (incorporated by reference to Exhibit 4.3 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2018).
4.10	Form of Warrant, dated November 7, 2018, issued by Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 4.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
4.11	Registration Rights Agreement, dated November 7, 2018, by and among Sorrento Therapeutics, Inc. and the parties identified on Schedule A thereto (incorporated by reference to Exhibit 4.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
4.12	Agreement and Consent, dated November 7, 2018, by and among Sorrento Therapeutics, Inc. and the Warrant Holders party thereto (incorporated by reference to Exhibit 10.6 of the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).

4.13	Exchange and Registration Rights Agreement, dated as of March 18, 2019, by and among Sorrento Therapeutics, Inc. and the stockholders and stock option holders of Semnur Pharmaceuticals, Inc. set forth on Schedule A thereto, (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on March 22, 2019).
4.14	Form of Warrant, dated May 3, 2019, issued by Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 3, 2019).
4.15	Amendment No. 1 to the Registration Rights Agreement, dated as of May 3, 2019, by and among Sorrento Therapeutics, Inc. and the persons party thereto (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the SEC on May 3, 2019).
4.16	Form of Series A Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on June 28, 2019).
4.17	Form of Series B Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the SEC on June 28, 2019).
4.18	Form of Series C Warrant (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the SEC on June 28, 2019).
4.19	Form of Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on October 8, 2019).
4.20	Note Conversion Agreement, dated as of November 8, 2019, by and among Sorrento Therapeutics, Inc. and the holders of convertible notes issued by Sorrento Therapeutics, Inc. as is set forth on Exhibit A thereto (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 12, 2019).
4.21	Form of Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the SEC on December 9, 2019).
4.22	Amendment No. 2 to the Registration Rights Agreement, dated as of December 6, 2019, by and among Sorrento Therapeutics, Inc. and the persons party thereto (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the SEC on December 9, 2019).
4.23	Description of Securities of Sorrento Therapeutics, Inc.
10.1+	Exclusive License and Development Agreement between Sorrento Therapeutics, Inc. and China Oncology Focus Limited dated October 3, 2014 (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q/A filed with the SEC on November 25, 2014).
10.2+	License Agreement, dated January 8, 2010, by and between The Scripps Research Institute and Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on May 14, 2010).
10.3±	Form of Stock Option Agreement (incorporated by reference to Exhibit 10.11 to the Registrant's Current Report on Form 8-K/A filed with the SEC on September 22, 2009).
10.4±	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on September 7, 2012).
10.5±	2009 Amended and Restated Stock Incentive Plan, and forms of agreements related thereto (incorporated by reference to Appendix A to the definitive proxy statement filed by Sorrento Therapeutics, Inc. with the Securities and Exchange Commission on May 13, 2016).
10.6±	2009 Equity Incentive Plan, and forms of agreement related thereto (incorporated by reference to Exhibit 10.17 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 25, 2010).
10.7	Option Agreement between Sorrento Therapeutics, Inc. and B.G, Negev Technologies and Applications Ltd. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 13, 2013).
10.8+	Exclusive License Agreement dated as of April 21, 2015 by and between NantCell, Inc. and Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 7, 2015).
10.9*	Stock Sale and Purchase Agreement dated as of May 14, 2015 by and between NantPharma, LLC and Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 7, 2015).

10.10	Binding Term Sheet for License Between Cytolumina/Fetolumina and TNK Therapeutics, Inc. (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 16, 2015).
10.11+	Exclusive License Agreement dated September 25, 2015 by and between LA Cell, Inc. and City of Hope (incorporated by reference to Exhibit 10.26 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 15, 2016).
10.12	Letter Agreement, dated June 30, 2016, among Chan Soon-Shiong Family Foundation, Cambridge Equities, L.P. and Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 8, 2016).
10.13	Lease Agreement, dated September 12, 2016, between Sorrento Therapeutics, Inc. and HCP Life Science REIT, Inc. (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2016).
10.14	First Amendment to Office Lease, dated October 19, 2018, between Sorrento Therapeutics, Inc. and HCP Life Science REIT, Inc. (incorporated by reference to Exhibit 10.15 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 15, 2019).
10.15±	Amended and Restated Employment Agreement between Sorrento Therapeutics, Inc. and Henry Ji, Ph.D. dated May 9, 2017 (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017).
10.16+	Contribution Agreement, dated as of June 12, 2017, by and among Sorrento Therapeutics, Inc., TNK Therapeutics, Inc. and Celularity, Inc. (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2017).
10.17+	Amendment No. 1 to Contribution Agreement, dated as of June 30, 2017, by and among Sorrento Therapeutics, Inc., TNK Therapeutics, Inc. and Celularity, Inc. (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2017).
10.18	Amendment No. 2 to Contribution Agreement, dated as of August 10, 2017, by and among Sorrento Therapeutics, Inc., TNK Therapeutics, Inc. and Celularity, Inc. (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2017).
10.19	Offer Letter, dated March 15, 2018, by and between Sorrento Therapeutics, Inc. and Jiong Shao (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on May 10, 2018).
10.20+	Indenture and form of Note issued thereunder, dated as of September 7, 2018, by and among Scilex Pharmaceuticals Inc., as issuer, Sorrento Therapeutics, Inc., as parent guarantor, and U.S. Bank National Association, as trustee and collateral agent (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
10.21	Form of Purchase Agreement, dated as of September 7, 2018, by and among Scilex Pharmaceuticals Inc., Sorrento Therapeutics, Inc. and the purchasers party thereto (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
10.22	Collateral Agreement, dated as of September 7, 2018, by and between Scilex Pharmaceuticals Inc. and U.S. Bank National Association, as trustee and collateral agent (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
10.23+	Irrevocable Standby Letter of Credit, dated September 7, 2018, issued by Sorrento Therapeutics, Inc. (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
10.24+	Term Loan Agreement, dated November 7, 2018, by and among Sorrento Therapeutics, Inc., certain subsidiaries of Sorrento Therapeutics, Inc., the lenders party thereto and Oaktree Fund Administration, LLC, as administrative and collateral agent (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 9, 2018).
10.25	Lease Agreement, dated November 13, 2018, between Sorrento Therapeutics, Inc. and HCP Life Science Estates, Inc. (incorporated by reference to Exhibit 10.30 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 15, 2019).
10.26†^	Amendment No. 1 to Term Loan Agreement, dated as of May 3, 2019, by and among Sorrento Therapeutics, Inc., certain subsidiaries of Sorrento Therapeutics, Inc., as guarantors, certain funds affiliated with Oaktree Capital Management, L.P. and Oaktree Fund Administration, LLC. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 3, 2019).

10.27#	Sorrento Therapeutics, Inc. 2019 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on September 23, 2019).
10.28	Equity Distribution Agreement, dated as of October 1, 2019, by and between Sorrento Therapeutics, Inc. and JMP Securities LLC (incorporated by reference to Exhibit 1.1 to the Registrant's Current Report on Form 8-K filed with the SEC on October 1, 2019).
10.29^	Omnibus Amendment No. 1 to Indenture and Letter of Credit, dated as of October 1, 2019, by and among Scilex Pharmaceuticals, Inc., Sorrento Therapeutics, Inc., U.S. Bank National Association, as trustee and collateral agent, and the beneficial owners of the senior secured notes due 2026 and the holders of such securities listed on the signature pages (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on October 1, 2019).
10.30†	Form of Securities Purchase Agreement, dated October 7, 2019, by and between Sorrento Therapeutics, Inc. and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on October 8, 2019).
10.31	Note Conversion Agreement, dated as of November 8, 2019, by and among Sorrento Therapeutics, Inc. and the holders of convertible notes issued by Sorrento Therapeutics, Inc. as is set forth on Exhibit A thereto (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 8, 2019).
10.32^	Amendment No.2 to Term Loan Agreement, dated as of December 6, 2019, by and among Sorrento Therapeutics, Inc., certain subsidiaries of Sorrento Therapeutics, Inc., as guarantors, certain funds affiliated with Oaktree Capital Management, L.P. and Oaktree Fund Administration, LLC.
21.1	List of Subsidiaries
23.1	Consent of Deloitte & Touche LLP
24	Power of Attorney (included on signature page hereto)
31.1	Certification of Henry Ji, Ph.D., Principal Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.
31.2	Certification of Jiong Shao, Principal Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.
32.1	Certification of Henry Ji, Ph.D., Principal Executive Officer and Jiong Shao, Principal Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document

* Non-material schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant hereby undertakes to furnish supplementally copies of any of the omitted schedules and exhibits upon request by the SEC.

\+ The SEC has granted confidential treatment with respect to certain portions of this exhibit. Omitted portions have been filed separately with the SEC.

± Management contract or compensatory plan.

^ Certain identified information has been omitted pursuant to Item 601(b)(10) of Regulation S-K because such information is both (i) not material and (ii) would likely cause competitive harm to the Registrant if publicly disclosed. The Registrant hereby undertakes to furnish supplemental copies of the unredacted exhibit upon request by the SEC.

† Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Registrant hereby undertakes to furnish supplementally copies of any of the omitted schedules and exhibits upon request by the SEC.

The following financial statement schedule is filed as part of this Annual Report on Form 10-K:

Schedule Number	Description
II	Valuation and Qualifying Accounts

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS

(in thousands)	Balance at Beginning of Period	Reserves Acquired	Additions	Deductions	Balance at End of Period
Fiscal Year 2019:					
Income tax valuation allowance	74,970	—	73,170	—	148,140
Total	$ 74,970	$ —	$ 73,170	$ —	$ 148,140
Fiscal Year 2018:					
Income tax valuation allowance	43,405	—	31,565	—	74,970
Total	$ 43,405	$ —	$ 31,565	$ —	$ 74,970
Fiscal Year 2017:					
Income tax valuation allowance	81,039	797	—	(38,431)	43,405
Total	$ 81,039	$ 797	$ —	$ (38,431)	$ 43,405

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.

March 2, 2020

SORRENTO THERAPEUTICS, INC.

By: /s/ Henry Ji

Henry Ji, Ph.D.
Chairman of the Board of Directors, Chief Executive Officer & President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints, jointly and severally, Henry Ji, Ph.D., and Jiong Shao, and each of them acting individually, as his or her attorney-in-fact, each with full power of substitution and resubstitution, for him in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, or their 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 and in the capacities and on the dates indicated.

Signature	Title(s)	Date
/s/ Henry Ji, Ph.D. **Henry Ji, Ph.D.**	Chairman of the Board of Directors, Chief Executive Officer & President *(Principal Executive Officer)*	March 2, 2020
/s/ Jiong Shao **Jiong Shao**	Chief Financial Officer *(Principal Financial and Accounting Officer)*	March 2, 2020
/s/ Dorman Followwill **Dorman Followwill**	Director	March 2, 2020
/s/ Yue Alexander Wu **Yue Alexander Wu, Ph.D.**	Director	March 2, 2020
/s/ Kim D. Janda, Ph.D. **Kim D. Janda, Ph.D.**	Director	March 2, 2020
/s/ Jaisim Shah **Jaisim Shah**	Director	March 2, 2020
/s/ David Lemus **David Lemus**	Director	March 2, 2020
/s/ Edgar Lee **Edgar Lee**	Director	March 2, 2020
/s/ Robin L. Smith **Robin Smith**	Director	March 2, 2020

Sorrento Therapeutics, Inc.

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Report of Independent Registered Public Accounting Firm

To the stockholders and the Board of Directors of
Sorrento Therapeutics, Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Sorrento Therapeutics, Inc. and subsidiaries (the "Company") as of December 31, 2019, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2019, of the Company and our report dated March 2, 2020, expressed an unqualified opinion on those consolidated financial statements and financial statement schedule and included explanatory paragraphs regarding a substantial doubt about the Company's ability to continue as a going concern and the Company's adoption of a new accounting standard.

Basis for Opinion

The Company's management is responsible 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's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures, as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company'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 generally accepted accounting principles. A company'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 company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company'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.

/s/ DELOITTE & TOUCHE LLP

San Diego, California
March 2, 2020

Report of Independent Registered Public Accounting Firm

To the stockholders and the Board of Directors of
Sorrento Therapeutics, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Sorrento Therapeutics, Inc. and subsidiaries (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2019, and the related notes and the schedule listed in the Index at Item 15 (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 2, 2020, expressed an unqualified opinion on the Company's internal control over financial reporting.

Change in Accounting Principle

As discussed in Note 1 to the financial statements, effective January 1, 2019, the Company adopted FASB Accounting Standards Update 2016-02, Leases, using the modified retrospective approach.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company’s negative working capital, recurring losses from operations, recurring negative cash flows from operations and substantial cumulative net losses raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits 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. We believe that our audits provide a reasonable basis for our opinion.

/s/ DELOITTE & TOUCHE LLP

San Diego, California
March 2, 2020

We have served as the Company's auditor since 2016.

SORRENTO THERAPEUTICS, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except for share amounts)

	December 31,	
ASSETS	**2019**	**2018**
Current assets:		
Cash and cash equivalents	$ 22,521	$ 158,738
Restricted cash	13,098	9,592
Accounts receivables, net	14,454	3,833
Inventory	3,362	2,898
Income tax receivable	59	526
Prepaid expenses and other	14,094	3,977
Total current assets	67,588	179,564
Property and equipment, net	29,888	24,384
Operating lease right-of-use assets	46,384	—
Intangibles, net	63,308	66,283
Goodwill	38,298	38,298
Cost method investments	237,008	237,008
Equity method investments	25,233	27,980
Restricted cash	45,150	45,000
Other, net	4,775	5,570
Total assets	$ 557,632	$ 624,087
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 27,630	$ 13,817
Accrued payroll and related benefit	15,914	10,236
Accrued expenses	18,728	13,403
Current portion of deferred revenue	3,643	2,703
Current portion of derivative liabilities	8,800	—
Current portion of operating lease liabilities	3,322	—
Acquisition consideration payable	908	11,312
Current portion of debt	36,261	10,150
Total current liabilities	115,206	61,621
Long-term debt, net of discount	199,088	223,136
Deferred tax liabilities, net	9,043	9,416
Deferred revenue	114,389	116,274
Derivative liabilities	35,000	—
Operating lease liabilities	52,111	—
Other long-term liabilities	39	6,140
Total liabilities	$ 524,876	$ 416,587
Commitments and contingencies (Note 12)		
Equity:		
Sorrento Therapeutics, Inc. equity		
Common stock, $0.0001 par value; 750,000,000 shares authorized and 167,798,120 and 122,280,092 shares issued and outstanding at December 31, 2019 and 2018, respectively	18	13
Additional paid-in capital	788,122	626,658
Accumulated other comprehensive income	(270)	15
Accumulated deficit	(659,818)	(367,750)

Treasury stock, 7,568,182 shares and 7,568,182 shares at cost at December 31, 2019 and 2018, respectively	(49,464)	(49,464)
Total Sorrento Therapeutics, Inc. stockholders' equity	78,588	209,472
Noncontrolling interests	(45,832)	(1,972)
Total equity	32,756	207,500
Total liabilities and equity	$ 557,632	$ 624,087

See accompanying notes

SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2019, 2018 and 2017
(In thousands, except for per share amounts)

	2019	2018	2017
Revenue:			
Net product revenue	$ 21,974	$ 5,873	$ 553
Service revenue	9,458	15,320	151,303
Total revenue	31,432	21,193	151,856
Operating costs and expenses:			
Cost of product sold	5,933	1,476	—
Cost of services	6,304	5,584	3,945
Research and development	106,879	76,963	55,532
Acquired in-process research and development	75,301	11,304	26,102
Selling, general and administrative	103,557	63,638	38,332
Intangible amortization	3,941	3,009	2,610
(Gain) Loss on contingent liabilities and acquisition consideration payable	(11,090)	9,644	—
Total operating costs and expenses	290,825	171,618	126,521
(Loss) income from operations	(259,393)	(150,425)	25,335
(Loss) gain on derivative liabilities	(36,792)	2,830	—
Loss on foreign currency exchange	(330)	(1,243)	(178)
Loss on trading securities	(203)	(144)	(665)
Interest expense	(36,139)	(57,631)	(4,980)
Interest income	1,091	921	241
Loss on debt settlement / extinguishment	(27,810)	(8,089)	(4,275)
Loss on receivable	—	—	(163)
Loss before income tax	(359,576)	(213,781)	15,315
Income tax benefit	(473)	(6,274)	(36,038)
Loss on equity method investments	(3,909)	(5,019)	(40,244)
Net (loss) income	(363,012)	(212,526)	11,109
Net (loss) income attributable to noncontrolling interests	(70,944)	(8,986)	1,977
Net (loss) income attributable to Sorrento	$ (292,068)	$ (203,540)	$ 9,132
Net (loss) income per share - basic per share attributable to Sorrento	$ (2.20)	$ (1.92)	$ 0.13
Net (loss) income per share - diluted per share attributable to Sorrento	$ (2.35)	$ (1.92)	$ 0.13
Weighted-average shares outstanding during period - basic per share attributable to Sorrento	132,732	106,150	69,742
Weighted-average shares outstanding during period - diluted per share attributable to Sorrento	140,514	106,150	70,381

See accompanying notes

SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
For the Years Ended December 31, 2019, 2018 and 2017
(In thousands, except for share amounts)

	2019	2018	2017
Net (loss) income	$ (363,012)	$ (212,526)	$ 11,109
Other comprehensive income:			
Foreign currency translation adjustments	(285)	(227)	360
Total other comprehensive (loss) income	(285)	(227)	360
Comprehensive (loss) income	(363,297)	(212,753)	11,469
Comprehensive (loss) income attributable to noncontrolling interests	(70,944)	(8,986)	1,977
Comprehensive (loss) income attributable to Sorrento	$ (292,353)	$ (203,767)	$ 9,492

See accompanying notes

SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the Years Ended December 31, 2019, 2018 and 2017
(In thousands, except for share amounts)

	Common Stock		Treasury Stock		Additional Paid-in	Accumulated Other Comprehensive	Accumulated	Noncontrolling	
	Shares	Amount	Shares	Amount	Capital	Income (Loss)	Deficit	Interest	Total
Balance, December 31, 2016	50,882,856	$ 6	7,568,182	$ (49,464)	$ 303,865	$ (118)	$ (174,252)	$ 6,465	$ 86,502
Scilex acquisition adjustment	—	—			(627)			(1,400)	(2,027)
Issuance of common stock for public placement and investments, net	30,468,700	3	—	—	57,925	—	—	—	57,928
Beneficial conversion feature recorded on convertible notes	—	—	—	—	32,062	—	—	—	32,062
Warrants issued in connection with convertible notes	—	—	—	—	12,669	—	—	—	12,669
Issuance of common stock for business combinations	1,552,011	—	—	—	3,055	—	—	—	3,055
Stock-based compensation	—	—	—	—	4,952	—	—	—	4,952
Foreign currency translation adjustment	—	—	—	—	—	360	—	—	360
Net income	—	—	—	—	—	—	9,132	1,977	11,109
Balance, December 31, 2017	82,903,567	9	7,568,182	(49,464)	413,901	242	(165,120)	7,042	206,610
Adoption impact of ASC 606	—	—	—	—	—	—	910	—	910
Issuance of common stock with exercise of options	57,690	—	—	—	211	—	—	—	211
Issuance of common stock for BDL settlement	309,916	—	—	—	2,340	—	—	—	2,340
Issuance of common stock for Scilex settlement	1,381,346	—	—	—	13,744	—	—	—	13,744
Issuance of common stock for public placement, net	13,793,997	2	—	—	83,608	—	—	—	83,610
Issuance of common stock for Virttu settlement	1,795,011	—	—	—	11,308	—	—	—	11,308
Issuance of common stock related to conversion of notes payable	22,038,565	2	—	—	49,998	—	—	—	50,000
Beneficial conversion feature recorded on convertible notes	—	—	—	—	12,006	—	—	—	12,006
Warrants issued in connection with convertible notes	—	—	—	—	9,646	—	—	—	9,646
Warrants issued in connection with Term Loan Agreement	—	—	—	—	21,746	—	—	—	21,746
Loss on debt extinguishment	—	—	—	—	1,916	—	—	—	1,916
Stock-based compensation	—	—	—	—	6,234	—	—	(28)	6,206
Foreign currency translation adjustment	—	—	—	—	—	(227)	—	—	(227)
Net loss	—	—	—	—	—	—	(203,540)	(8,986)	(212,526)
Balance, December 31, 2018	122,280,092	13	7,568,182	(49,464)	626,658	15	(367,750)	(1,972)	207,500
Issuance of common stock upon exercise of stock options	268,164	—	—	—	492	—	—	—	492
Issuance of common stock upon exercise of warrants	3,128,000	—	—	—	8,359	—	—	—	8,359
Issuance of common stock for public placement, net	258,515	—	—	—	990	—	—	—	990
Equity contribution related to Semnur acquisition	—	—	—	—	27,991	—	—	26,600	54,591
Stock-based compensation	—	—	—	—	12,648	—	—	—	12,648
Issuance of 2019 Warrants	—	—	—	—	4,288	—	—	—	4,288
Issuance of December 2019 Warrants	—	—	—	—	6,010	—	—	—	6,010
2019 Public Offering of common stock and warrants, net of issuance costs	8,333,334	1	—	—	23,322	—	—	—	23,323
2019 Registered Direct Offering, net of issuance costs	10,869,566	1	—	—	23,384	—	—	—	23,385
Issuance of common stock through conversion of convertible notes	22,660,449	3	—	—	53,980	—	—	—	53,983

Adjustment to noncontrolling interest	—	—	—	—	—	—	—	484	484
Foreign currency translation adjustment	—	—	—	—		(285)	—	—	(285)
Net loss	—	—	—	—	—	—	(292,068)	(70,944)	(363,012)
Balance, December 31, 2019	167,798,120	$ 18	7,568,182	$ (49,464)	$ 788,122	$ (270)	$ (659,818)	$ (45,832)	$ 32,756

See accompanying notes

SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2019, 2018 and 2017
(In thousands, except for share amounts)

	2019	2018	2017
Operating activities:			
Net (loss) income	$ (363,012)	$ (212,526)	$ 11,109
Adjustments to reconcile net loss to net cash used for operating activities:			
Depreciation and amortization	10,989	9,494	7,138
Non-cash interest expense and amortization of debt issuance costs	22,526	53,391	1,803
Non-cash operating lease cost	4,053	—	—
Loss on trading securities	203	144	665
Stock-based compensation	12,648	6,206	4,952
Acquired in-process research and development	75,301	9,895	—
Loss on debt settlement / extinguishment	27,810	8,089	4,275
Loss (gain) on derivative liability	36,792	(2,830)	—
Loss on equity method investments	3,909	5,019	40,244
Non-cash income on cost method investments	—	—	(116,249)
(Gain) Loss on contingent liabilities and acquisition consideration payable	(11,090)	9,644	—
Loss on IPR&D impairment	—	1,826	—
Deferred tax provision	(373)	(6,119)	(35,679)
Changes in operating assets and liabilities, excluding effect of acquisitions:			
Grants and other receivables	(10,622)	(1,623)	(515)
Accrued payroll	5,678	5,751	920
Prepaid expenses, deposits and other assets	(517)	(2,804)	(1,669)
Accounts payable	10,221	3,578	1,592
Deferred revenue	(945)	(3,263)	(20,891)
Other	(628)	251	802
Acquisition consideration payable	—	(2,020)	—
Accrued expenses and other liabilities	4,061	6,130	2,323
Net cash used for operating activities	(172,996)	(111,767)	(99,180)
Investing activities:			
Purchases of property and equipment	(11,442)	(11,195)	(10,972)
Purchase of assets related to Semnur, net of cash acquired	(17,040)	—	—
Other acquisitions and investments	(9,691)	(10,000)	(5,557)
Net cash used for investing activities	(38,173)	(21,195)	(16,529)
Financing activities:			
Proceeds from equity offerings, net of issuance costs	46,707	—	—
Proceeds from issuance of common stock, net	990	83,608	57,928
Proceeds from exercise of stock options and warrants	8,851	211	—
Payments on bridge loans and Scilex Notes	(3,074)	(20,000)	—
Proceeds from 2017 Securities Purchase Agreement, net of issuance costs	—	—	49,916
Short-term working capital funding arrangements, net of issuance costs	8,000	21,261	—
Proceeds from issuance of Scilex notes, net of issuance costs	—	134,275	—
Proceeds from issuance of convertible notes	—	37,849	—
Payment of Hercules Loan Agreement	—	—	(53,157)

Scilex consideration for regulatory milestones	—	(22,466)	—
Net payments of deferred compensation	—	—	(1,012)
Proceeds from Oaktree Term Loans, net of issuance costs	17,411	91,260	—
Net cash provided by financing activities	78,885	325,998	53,675
Net change in cash, cash equivalents and restricted cash	(132,284)	193,036	(62,034)
Net effect of exchange rate changes on cash	(277)	(135)	65
Cash, cash equivalents and restricted cash at beginning of period	213,330	20,429	82,398
Cash, cash equivalents and restricted cash at end of period	$ 80,769	$ 213,330	$ 20,429
Supplemental disclosures:			
Cash paid during the period for:			
Income taxes	13	6	34
Interest	12,738	1,620	3,499
Supplemental disclosures of non-cash investing and financing activities:			
Semnur acquisition consideration paid in equity	54,591	—	—
Semnur acquisition costs incurred but not paid	601	—	—
Virttu acquisition non-cash consideration	—	11,308	15,465
Scilex non-cash consideration for regulatory milestone	—	13,744	1,380
BDL stock issuance	—	2,340	—
Conversion of convertible notes	53,983	50,000	—
Loss on debt extinguishment	—	1,916	—
Property and equipment costs incurred but not paid	849	328	37
Reconciliation of cash, cash equivalents and restricted cash within the Company's consolidated balance sheets:			
Cash and cash equivalents	22,521	158,738	20,429
Restricted cash	58,248	54,592	—
Cash, cash equivalents, and restricted cash	$ 80,769	$ 213,330	$ 20,429

See accompanying notes

1. Organization and Significant Accounting Policies

Description of Business

Sorrento Therapeutics, Inc., together with its subsidiaries (the "Company"), is a clinical stage and commercial biopharma company focused on delivering innovative and clinically meaningful therapies to patients and their families to address unmet medical needs. The Company also has programs assessing the use of its technologies and products in autoimmune, inflammatory and neurodegenerative diseases.

At its core, the Company is an antibody-centric company and leverages its proprietary G-MAB™ library and targeted delivery modalities to generate the next generation of cancer therapeutics.

The Company`s vision is to leverage these antibodies in conjunction with proprietary targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary chimeric antigen receptor T-cell therapy ("CAR-T"), dimeric antigen receptor T-cell therapy ("DAR-T"), antibody drug conjugates ("ADCs") as well as bispecific antibody approaches.

Outside of immune-oncology programs, as part of the Company`s global aim to provide a wide range of therapeutic products to meet underserved markets, the Company has made investments in non-opioid pain management.

In this area, the Company has in-house developed and acquired proprietary technologies to responsibly develop next generation, branded pharmaceutical products to better manage patients' medical conditions and maximize the quality of life of patients and healthcare providers.

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company's subsidiaries. For consolidated entities where the Company owns or is exposed to less than 100% of the economics, the Company records net income (loss) attributable to noncontrolling interests in its consolidated statements of operations equal to the percentage of the economic or ownership interest retained in such entities by the respective noncontrolling parties. All intercompany balances and transactions have been eliminated in consolidation.

The Company has reclassified historically presented revenue and cost of revenue to conform to the current period presentation. Further, the Company re-segmented its business into two new operating segments effective January 1, 2019. The reclassification had no impact on previously reported results of operations or financial position. (See Note 15).

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. The Company minimizes its credit risk associated with cash and cash equivalents by periodically evaluating the credit quality of its primary financial institution. The balance at times may exceed federally insured limits. The Company has not experienced any losses on such accounts.

Restricted Cash

Restricted cash in the Company's consolidated balance sheet as of December 31, 2019, included approximately $45.0 million of restricted cash related to the Scilex Notes in the form of both the Reserve Account and the Collateral Account

(See Note 9). Restricted cash in the Company's consolidated balance sheet as of December 31, 2019 also included approximately $13.1 million of restricted cash related to the Oaktree Term Loan Agreement in the form of a Reserve Account.

Fair Value of Financial Instruments

The Company follows accounting guidance on fair value measurements for financial instruments measured on a recurring basis, as well as for certain assets and liabilities that are initially recorded at their estimated fair values. Fair value is defined as the exit price, or the amount that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company uses the following three-level hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs to value its financial instruments:

- Level 1: Observable inputs such as unadjusted quoted prices in active markets for identical instruments.
- Level 2: Quoted prices for similar instruments that are directly or indirectly observable in the marketplace.
- Level 3: Significant unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

Financial instruments measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company’s assessment of the significance of a particular input to the fair value measurement in its entirety requires it to make judgments and consider factors specific to the asset or liability. The use of different assumptions and/or estimation methodologies may have a material effect on estimated fair values. Accordingly, the fair value estimates disclosed or initial amounts recorded may not be indicative of the amount that the Company or holders of the instruments could realize in a current market exchange.

The carrying amounts of cash equivalents approximate their fair value based upon quoted market prices. Certain of the Company’s financial instruments are not measured at fair value on a recurring basis, but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as cash, accounts receivable and payable, and other financial instruments in current assets or current liabilities.

Accounts Receivable, Net

Accounts receivable are presented net of allowances for doubtful accounts and consist of trade receivables from sales and services provided to certain customers, which are generally unsecured. Estimated credit losses related to trade accounts receivable are recorded as general and administrative expenses and as an allowance for doubtful accounts and accounts receivable, net. The Company reviews reserves and makes adjustments based on historical experience and known collectability issues and disputes. When internal collection efforts on accounts have been exhausted, the accounts are written off by reducing the allowance for doubtful accounts. The allowance for doubtful accounts is not material.

Inventory

The Company determines inventory cost on a first-in, first-out basis. The Company reduces the carrying value of inventories to a lower of cost or net realizable value for those items that are potentially excess, obsolete or slow-moving. The Company considers the need for allowances for excess and obsolete inventory based upon historical experience, sales trends, and specific categories of inventory and expiration dates for inventory on hand. As of December 31, 2019, the Company's inventory is primarily comprised of finished goods.

Property and Equipment

Property and equipment are carried at cost less accumulated depreciation. Depreciation of property and equipment is computed using the straight-line method over the estimated useful lives of the assets, which are generally three to five years. Leasehold improvements are amortized over the lesser of the life of the lease or the life of the asset. Repairs and maintenance are charged to expense as incurred.

Acquisitions

The Company has engaged in business combination activity. The accounting for business combinations requires management to make judgments and estimates of the fair value of assets acquired, including the identification and valuation of intangible assets, as well as liabilities assumed. Such judgments and estimates directly impact the amount of goodwill recognized in connection with each acquisition, as goodwill presents the excess of the purchase price of an acquired business over the fair value of its net tangible and identifiable intangible assets.

Acquired In-Process Research and Development Expense

The Company has acquired, and may continue to acquire, the rights to develop and commercialize new drug candidates. The up-front payments to acquire a new drug compound or drug delivery devices, as well as future milestone payments associated with asset acquisitions that do not meet the definition of a derivative and are deemed probable to achieve the milestones, are immediately expensed as acquired in-process research and development provided that the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, have no alternative future use. The acquired in-process research and development related to the business combination of Virttu Biologics Limited ("Virttu"), for which certain products are under development and expected to be commercialized in the future, was capitalized and recorded within "Intangibles, net" on the accompanying consolidated balance sheet. The Company commenced amortization of acquired in-process research and development related to the business combination of Scilex Pharmaceuticals Inc. ("Scilex Pharma") upon commercialization of ZTlido in October 2018. Capitalized in-process research and development is reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable. (See Note 3 for further discussion of acquired in-process research and development expense related to the Semnur and Sofusa acquisitions).

Goodwill and Other Long-Lived Assets

Goodwill, which has an indefinite useful life, represents the excess of cost over fair value of net assets acquired. Goodwill is reviewed at the segment level for impairment at least annually during the fourth quarter, or more frequently if events occur indicating the potential for impairment. During its goodwill impairment review, the Company may assess qualitative factors to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying amount, including goodwill. The qualitative factors include, but are not limited to, macroeconomic conditions, industry and market considerations, and the overall financial performance of the Company. If, after assessing the totality of these qualitative factors, the Company determines that it is not more likely than not that the fair value of its reporting unit is less than its carrying amount, then no additional assessment is deemed necessary. Otherwise, the Company proceeds to perform the two-step test for goodwill impairment. The first step involves comparing the estimated fair value of the reporting unit with its carrying value, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, the Company performs the second step of the goodwill impairment test to determine the amount of loss, which involves comparing the implied fair value of the goodwill to the carrying value of the goodwill. The Company may also elect to bypass the qualitative assessment in a period and elect to proceed to perform the first step of the goodwill impairment test. The Company performed its annual assessment for goodwill impairment in the fourth quarter of 2019, noting no indication of impairment. There have not been any triggering events indicating the potential for impairment through December 31, 2019.

The Company evaluates its long-lived and intangible assets with definite lives, such as property and equipment, acquired technology, customer relationships, patent and license rights, for impairment by considering the expected use of the assets and the effects of obsolescence, demand, anticipated technological advances, market influences and other economic factors. The factors that drive the estimate of useful life are often uncertain and are reviewed on a periodic basis or when events occur that warrant review. Recoverability is measured by comparison of the assets' book value to future net undiscounted cash flows that the assets are expected to generate. No impairment charge was recorded during the year ended December 31, 2019.

Debt, Including Debt With Detachable Warrants

Debt with detachable warrants are evaluated for the classification of warrants as either equity instruments, derivative liabilities, or liabilities depending on the specific terms of the warrant agreement. In circumstances in which debt is issued with equity-classified warrants, the proceeds from the issuance of convertible debt are first allocated to the debt and the warrants at their relative estimated fair values. The portion of the proceeds so allocated to the warrants are accounted for as paid-in capital and a debt discount. The remaining proceeds, as further reduced by discounts created by the bifurcation of embedded derivatives and beneficial conversion features, are allocated to the debt. The Company accounts for debt as liabilities measured at amortized cost and amortizes the resulting debt discount from the allocation of proceeds, to interest expense using the effective interest method over the expected term of the debt instrument. The Company considers whether there are any embedded features in debt instruments that require bifurcation and separate accounting as derivative financial instruments

pursuant to Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging*.

If the amount allocated to the convertible debt results in an effective per share conversion price less than the fair value of the Company's common stock on the commitment date, the intrinsic value of this beneficial conversion feature is recorded as a discount to the convertible debt with a corresponding increase to additional paid in capital. The beneficial conversion feature discount is equal to the difference between the effective conversion price and the fair value of the Company's common stock at the commitment date, unless limited by the remaining proceeds allocated to the debt.

The Company may enter financing arrangements, the terms of which involve significant assumptions and estimates, including future net product sales, in determining interest expense, amortization period of the debt discount, as well as the classification between current and long-term portions. In estimating future net product sales, the Company assesses prevailing market conditions using various external market data against the Company's anticipated sales and planned commercial activities. Consequently, the Company imputes interest on the carrying value of the debt and records interest expense using an imputed effective interest rate. The Company reassesses the expected payments each reporting period and accounts for any changes through an adjustment to the effective interest rate on a prospective basis, with a corresponding impact to the classification of the Company's current and long-term portions.

Derivative Liabilities

Derivative liabilities are recorded on the Company`s consolidated balance sheets at their fair value on the date of issuance and are revalued on each balance sheet date until such instruments are settled or expire, with changes in the fair value between reporting periods recorded as other income or expense.

Investments in Other Entities

The Company holds a portfolio of investments in equity securities that are accounted for under either the equity method or cost method. Investments in entities over which the Company has significant influence but not a controlling interest are accounted for using the equity method, with the Company's share of earnings or losses reported in loss on equity method investments.

All investments are reviewed on a regular basis for possible impairment. If an investment's fair value is determined to be different than its net carrying value and the decline is determined to be other-than-temporary, the investment is written down to its fair value. Such an evaluation is judgmental and dependent on specific facts and circumstances. The Company determines the fair value of its equity method investments to evaluate whether impairment losses shall be recorded using Level 3 inputs.

Research and Development Costs

The Company expenses the cost of research and development as incurred. Research and development expenses are comprised of costs incurred in performing research and development activities, including clinical trial costs, manufacturing costs for both clinical and preclinical materials as well as other contracted services, license fees and other external costs. Nonrefundable advance payments for goods and services that will be used in future research and development activities are expensed when the activity is performed or when the goods have been received, rather than when payment is made, in accordance with FASB ASC Topic 730, *Research and Development*.

Income Taxes

The provisions of the FASB ASC Topic 740 *"Income Taxes,"* addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC Topic 740-10, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The Company has determined that it has uncertain tax positions.

The Company accounts for income taxes using the asset and liability method to compute the differences between the tax basis of assets and liabilities and the related financial amounts, using currently enacted tax rates.

The Company has deferred tax assets, which are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized. As of

December 31, 2019, the Company maintained a full valuation allowance against its deferred tax assets, with the exception of an amount equal to its deferred tax liabilities that are scheduled to reverse against the Company's deferred tax assets.

Leases

The Company determines if an arrangement is a lease at inception. Operating lease right-of-use ("ROU") assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. As the Company`s leases do not provide an implicit rate, it uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The operating lease ROU asset also includes any lease payments made and is reduced by lease incentives. The Company`s lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Revenue Recognition

The Company's revenues are generated from license revenues, product revenues, the sale of customized reagents and other material and contract manufacturing and other services. The Company does not have significant costs associated with costs to obtain contracts with its customers.

License Revenues

License fees for the licensing of product rights are recorded as deferred revenue upon receipt of cash and recognized as revenue on a straight-line basis over the license period, with the exception of license agreements with no remaining performance obligations or undelivered obligations. The Company applies judgment in determining the timing of revenue recognition related to contracts that include multiple performance obligations. The total transaction price of the contract is allocated to each performance obligation in an amount based on the estimated relative standalone selling prices of the promised goods or services underlying each performance obligation. For goods or services for which observable standalone selling prices are not available, the Company develops an estimated standalone selling price of each performance obligation.

As of December 31, 2019, the future performance obligations for license revenues relate to the ImmuneOncia Therapeutics, LLC ("ImmuneOncia") and NantCell, Inc. ("NantCell") license agreements.

The total consideration for the ImmuneOncia license performance obligation, effective September 1, 2016, represented $9.6 million. The estimated revenue expected to be recognized for future performance obligations, as of December 31, 2019, was approximately $8.0 million. The Company expects to recognize license revenue of approximately $0.5 million of the remaining performance obligation annually through the remaining term. The Company applied judgment in estimating the 20-year contract term, analogous to the expected life of the patent, over which revenue is recognized over time given the ongoing performance obligation related to the Company's participation on a steering committee for the technologies under the agreement.

As of December 31, 2019 and December 31, 2018, the NantCell license agreement, effective April 21, 2015, represented $110.0 million of contract liabilities reflected in long-term deferred revenue. See Note 8 for additional information regarding the remaining performance obligation for the agreement.

Product and Service Revenues

Product and service revenues are comprised of Scilex product sales of ZTlido, contract manufacturing associated with sales of customized reagents at Concortis Biosystems Corp. ("Concortis"), materials and supply agreements and contract manufacturing services at BioServ Corporation.

The Company does not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which it recognizes revenue at the amount to which it has the right to invoice for services performed. The Company applied the practical expedient in ASC Topic 606-10-50-14 to the revenue contracts for Concortis sales and services and materials and supply agreements due to the short-term length of such contracts.

The following table shows revenue disaggregated by product and services type for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	Years Ended December 31,		
	2019	2018	2017
Scilex Pharma product sales	$ 21,033	$ 2,606	$ —
Other product sales	941	3,267	553
Net product revenue	$ 21,974	$ 5,873	$ 553
Concortis Biosystems Corporation	6,520	5,159	4,049
Bioserv Corporation	2,450	5,992	5,000
Joint development agreement	—	3,333	1,667
Royalties, licenses and other revenues	488	836	140,587
Service revenue	$ 9,458	$ 15,320	$ 151,303

The Company is obligated to accept from customers the return of products sold that are damaged or do not meet certain specifications. The Company may authorize the return of products sold in accordance with the terms of its sales contracts, and estimates allowances for such amounts at the time of sale. The Company has not experienced any material sales returns.

Scilex Pharma

The Company’s revenue is generated from product sales within the United States. Substantially all of the Company’s revenue and accounts receivable result from a sole customer.

Revenues from product sales is fully comprised of sales of ZTlido. The Company's performance obligation with respect to sales of ZTlido is satisfied at a point in time, which transfers control upon delivery of product to the customer. The Company considers control to have transferred upon delivery because the customer has legal title to the asset, physical possession of the asset has been transferred to the customer, the customer has significant risks and rewards of ownership of the asset, and the Company has a present right to payment at that time. The Company identified a single performance obligation. Invoicing typically occurs upon shipment and the length of time between invoicing and when payment is due is not significant. The aggregate dollar value of unfulfilled orders as of December 31, 2019 was not material.

For product sales, the Company records gross-to-net sales adjustments for government and managed care rebates, chargebacks, wholesaler and distributor fees, sales returns and prompt payment discounts. Such variable consideration is estimated in the period of the sale and are estimated using a most likely amount approach based primarily upon provisions included in the Company’s customer contract, customary industry practices and current government regulations.

Other Product Sales

Revenues from the sale of materials associated with the Company's research and development arrangements are recognized at a point in time upon the transfer of control, which is generally upon shipment.

Concortis Biosystems Corporation (“Concortis”)

Contract manufacturing associated with sales of customized reagents for Concortis operations relate to providing synthetic expertise to customers’ synthesis by delivering proprietary cytotoxins, linkers and linker-toxins and ADC service using industry standard toxin and antibodies provided by customers which are recognized at a point in time upon the transfer of control, which is generally upon shipment given the short contract terms which are generally three months or less.

Bioserv Corporation (“Bioserv”)

Contract manufacturing services associated with the Company’s Bioserv operations related to finish and fill activities for drug products and reagents are recognized ratably over the contract term based on a time-based measure which reflects the transfer of services to the customer because the manufactured products are highly customized and do not have an alternative use to the Company. As of December 31, 2019 and 2018, the estimated revenue expected to be recognized for future performance obligations associated with contract manufacturing services was approximately $2.2 million and $1.6 million, respectively.

Joint Development Agreement

In September 2017, the Company entered into a joint development agreement with Celularity Inc. (“Celularity”) whereby the Company agreed to provide research services to Celularity through June 30, 2018 in exchange for an upfront payment of $5.0 million. The revenue related to the joint development agreement of $5.0 million was recognized over the length of the service agreement as services were performed. The Company recorded sales and services revenues under the joint development

agreement of $3.3 million and $1.7 million for the years ended December 31, 2018 and 2017, respectively. The Company recorded no sales and services revenues under the joint development agreement during the year ended December 31, 2019 as such arrangement is complete.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with FASB ASC Topic 718 "*Compensation – Stock Compensation*," which establishes accounting for equity instruments exchanged for employee services. Under such provisions, stock-based compensation cost is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense, under the straight-line method, over the employee's requisite service period (generally the vesting period of the equity grant).

Comprehensive (Loss) Income

Comprehensive (loss) income is primarily comprised of net income (loss) and foreign currency translation adjustments. The Company displays comprehensive (loss) income and its components in its consolidated statements of comprehensive (loss) income.

Net Income (Loss) per Share

Basic net income (loss) per share is computed by dividing net loss for the period by the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share reflects the additional dilution from potential issuances of common stock, such as stock issuable pursuant to the exercise of stock options or the exercise of outstanding warrants. The treasury stock method and the if-converted method are used to calculate the potential dilutive effect of these common stock equivalents. Potentially dilutive shares are excluded from the computation of diluted net loss per share when their effect is anti-dilutive. In periods where a net loss is presented, all potentially dilutive securities are anti-dilutive and are excluded from the computation of diluted net loss per share.

Recent Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-02, *Leases*. ASU No. 2016-02 is aimed at making leasing activities more transparent and comparable, and required substantially all leases to be recognized by lessees on their balance sheet as a right-of-use asset and corresponding lease liability, including leases historically accounted for as operating leases. ASU No. 2016-2 was effective for financial statements issued for fiscal years beginning after December 15, 2018. In July 2018, the FASB issued ASU No. 2018-11, which allows for an optional transition method to adopt the lease standard by recognizing a cumulative-effect adjustment to the opening balance sheet of retained earnings in the period of adoption, with no adjustment to prior comparative periods. In March 2019, the FASB issued ASU No. 2019-01, which clarifies that entities are not subject to the transition disclosure requirements in ASC Topic 250-10-50-3 related to the effect of an accounting change on certain interim period financial information. ASU No. 2016-02 and all subsequent amendments (collectively, "ASC 842") were effective for public entities for annual reporting periods beginning after December 15, 2018, including interim periods therein. The Company adopted ASC 842 during the first quarter of 2019 and elected to apply the cumulative-effect adjustment to the opening balance sheet and optional transition method to not present comparable prior periods as allowed under ASU No. 2018-11. The Company made the following practical expedients elections: (1) elected the short-term lease exception, (2) did not elect hindsight, and (3) elected to not separate its non-lease components from lease components. The Company adopted the transitional practical expedients, which allowed the Company to carry forward its historical assessment of whether existing agreements contained a lease and the classification of the Company's existing operating leases, and also allowed the Company to not reassess initial direct costs. The adoption of ASC 842 resulted in the recording of $44.9 million in operating lease right-of-use ("ROU") assets and $2.6 million and $47.8 million in the current portion of operating lease liabilities and non-current operating lease liabilities, respectively, as of January 1, 2019. Deferred rent, historically recorded in other current liabilities and other non-current liabilities, was derecognized. There were no adjustments to retained earnings. The Company reports financial information for fiscal years ending on or before December 31, 2018 under the previous lease accounting standard.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, to improve financial reporting by requiring timely recording of credit losses on loans and other financial instruments held by financial institutions and other organizations. The ASU requires the measurement of all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions and reasonable and supportable forecasts. The ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. While the Company is currently evaluating the impact the standard will have on it, the

Company does not expect the adoption of ASU No. 2016-13 to have a material impact and on the Company's consolidated financial position, results of operations or cash flows.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation - Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, to include share-based payment transactions for acquiring goods and services from nonemployees. The ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In August 2018, the FASB issued ASU No. 2018-13, *Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement*, to improve the effectiveness of the disclosure requirements for fair value measurements. The ASU is effective for fiscal years and interim periods beginning after December 15, 2019. Amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements and the narrative description of measurement uncertainty will be applied prospectively as of the beginning of the fiscal year of adoption with all other amendments being applied retrospectively to all periods presented upon their effective date. Early adoption is permitted. The Company is evaluating the impact the standard will have on its consolidated financial statements.

In November 2018, the FASB issued ASU No. 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction Between Topic 808 and Topic 606.* The amendments in this update provide guidance on how to assess whether certain transactions between collaborative arrangement participants should be accounted for within the revenue recognition standard. The amendments in this update are effective for interim and annual periods for the Company beginning on January 1, 2020, with early adoption permitted. The Company is evaluating the impact the standard will have on its consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes Topic 740): Simplifying the Accounting for Income Taxes.* The amendments in this update simplify the accounting for income taxes by removing certain exceptions to the general principles in ASC Topic 740. The amendments also improve consistent application of and simplify U.S. GAAP for other areas of ASC Topic 740 by clarifying and amending existing guidance. The amendments in this update are effective for interim and annual periods for the Company beginning after December 15, 2020, with early adoption permitted. The Company is evaluating the impact the standard will have on its consolidated financial statements.

2. Liquidity and Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The Company has negative working capital and recurring losses from operations, recurring negative cash flows from operations and substantial cumulative net losses to date and anticipates that it will continue to do so for the foreseeable future as it continues to identify and invest in advancing product candidates, as well as expanding corporate infrastructure.

The Company has plans in place to obtain sufficient additional fundraising to fulfill its operating and capital requirements for the next 12 months. The Company's plans include continuing to fund its operating losses and capital funding needs through public or private equity or debt financings, strategic collaborations, licensing arrangements, asset sales, government grants or other arrangements. Although management believes such plans, if executed, should provide the Company sufficient financing to meet its needs, successful completion of such plans is dependent on factors outside of the Company's control. As such, management cannot conclude that such plans will be effectively implemented within one year after the date that the financial statements are issued. As a result, management has concluded that the aforementioned conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern within one year after the date the financial statements are issued.

If the Company is unable to raise additional capital in sufficient amounts or on terms acceptable, the Company may have to significantly delay, scale back or discontinue the development or commercialization of one or more of its product candidates. The Company may also seek collaborators for one or more of its current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. The consolidated financial statements do not reflect any adjustments that might be necessary if the Company is unable to continue as a going concern.

Equity Distribution Agreement

In October 2019, the Company entered into an Equity Distribution Agreement (the "Distribution Agreement") with JMP Securities LLC, as sales agent (the "Sales Agent"), pursuant to which the Company may offer and sell, from time to time, through or to the Sales Agent, as sales agent or principal (the "Offering"), up to $75.0 million in shares of its common stock (the "Shares"). Any Shares offered and sold in the Offering will be issued pursuant to the Company's Registration Statement on Form S-3 (File No. 333-221443) filed with the SEC on November 9, 2017, as amended on December 1, 2017 and declared effective on December 6, 2017 (the "Form S-3"), the base prospectus dated December 6, 2017 included in the Form S-3 and the prospectus supplement relating to the Offering filed with the SEC on October 1, 2019.

Under the terms of the Distribution Agreement, the Sales Agent will be entitled to a commission at a fixed rate of 3.0% of the gross proceeds from each sale of Shares under the Distribution Agreement. The Company will also reimburse the Sales Agent for certain expenses incurred in connection with the Distribution Agreement, and agreed to provide indemnification and contribution to the Sales Agent with respect to certain liabilities, including liabilities under the Securities Act and the Securities Exchange Act of 1934, as amended. The Company currently intends to use any net proceeds from the Offering for working capital and general corporate purposes.

As disclosed in Note 18, on February 10, 2020, the Company voluntarily suspended its continuous offering and sale of shares of its common stock pursuant to the Distribution Agreement. On February 10, 2020, the Company entered into the Aspire Purchase Agreement, as described in Note 18.

If the Company raises additional funds by issuing equity securities, substantial dilution to existing stockholders would result. If the Company raises additional funds by incurring debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial ratios that may restrict the Company's ability to operate its business.

3. Acquisitions

2019 Acquisitions

Acquisition of Semnur Pharmaceuticals, Inc. ("Semnur")

On March 18, 2019, the Company, for limited purposes, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Semnur Pharmaceuticals, Inc. Scilex Holding Company ("Scilex Holding"), Sigma Merger Sub, Inc., the prior wholly owned subsidiary of Scilex Holding ("Merger Sub"), and Fortis Advisors LLC, solely as representative of the holders of Semnur equity (the "Equityholders' Representative"). Pursuant to the Merger Agreement, Merger Sub merged with and into Semnur (the "Merger"), with Semnur surviving as a wholly owned subsidiary of Scilex Holding.

Immediately prior to the closing of the Merger, the Company and each of the other holders of outstanding shares of capital stock of Scilex Pharma, the Company's majority-owned subsidiary, contributed each share of Scilex Pharma capital stock that the Company or it owned to Scilex Holding in exchange for one share of Scilex Holding common stock (the "Contribution"). In connection with the Contribution, the Company provided Scilex Holding with a loan with an initial principal amount of $16.5 million in the form of a note payable, which loan was used to fund the acquisition of Semnur. As a result of the Contribution, Scilex Pharma became a wholly-owned subsidiary of Scilex Holding and the Company became the owner of approximately 77% of Scilex Holding's issued and outstanding capital stock.

At the closing of the Semnur acquisition, Scilex Holding issued to the holders of Semnur's capital stock and options to purchase Semnur's common stock (collectively, the "Semnur Equityholders") upfront consideration with a value of approximately $70.0 million. The upfront consideration was comprised of the following: (a) a cash payment of approximately $15.0 million, and (b) $55.0 million of shares of Scilex Holding common stock (47,039,315 shares issued, 352,972 shares issuable and up to 99,190 shares issuable contingent upon such shares being release from escrow, valued at $1.16 per share) (the "Stock Consideration").

On August 7, 2019, Scilex Holding entered into an amendment to the Merger Agreement to provide that, following the consummation of Scilex Holding's first bona fide equity financing with one or more third-party financing sources on an arms' length basis with gross proceeds to Scilex Holding of at least $40.0 million, certain of the former Semnur Equityholders will be paid cash in lieu of: (a) the 352,972 shares of the Company's common stock otherwise issuable to such Semnur Equityholders pursuant to the Merger Agreement, and (b) any shares that would otherwise be issued to such Semnur Equityholders upon release of shares held in escrow pursuant to the Merger Agreement, with such shares in each case valued at $1.16 per share. The amendment resulted in a reclassification of $0.4 million from additional paid-in capital to accrued liabilities.

A portion of the cash consideration otherwise payable to the Semnur Equityholders was set aside for expenses incurred by the Equityholders' Representative, and 4,749,095 shares of Scilex Holding common stock otherwise issuable to Semnur Equityholders were placed in escrow with a third party as security for the indemnification obligations of the Semnur Equityholders under the Merger Agreement, including in respect of breaches of representations and warranties of Semnur included in the Merger Agreement. The Semnur Equityholders that receive the Stock Consideration were required to sign an exchange and registration rights agreement with the Company (the "Exchange Agreement"), which is further described below.

Following the issuance of the Stock Consideration, the Company's ownership in Scilex Holding was diluted to approximately 58% of Scilex Holding's issued and outstanding capital stock. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions contained therein, Scilex Holding also agreed to pay the Semnur Equityholders up to $280.0 million in aggregate contingent cash consideration based on the achievement of certain milestones, which is comprised of a $40.0 million payment that will be due upon obtaining the first approval of a New Drug Application of a Semnur product by the U.S. Food and Drug Administration (the "FDA") and additional payments that will be due upon the achievement of certain amounts of net sales of Semnur products as follows: (a) a $20.0 million payment upon the achievement of $100.0 million in cumulative net sales of a Semnur product, (b) a $20.0 million payment upon the achievement of $250.0 million in cumulative net sales of a Semnur product, (c) a $50.0 million payment upon the achievement of $500.0 million in cumulative net sales of a Semnur product, and (d) a $150.0 million payment upon the achievement of $750.0 million in cumulative net sales of a Semnur product.

Pursuant to the Exchange Agreement, and upon the terms and subject to the conditions contained therein, if within 18 months following the closing of the Merger (the "Merger Closing"), 100% of the outstanding equity of Scilex Holding has not been acquired by a third party and Scilex Holding has not entered into a definitive agreement with respect to, or otherwise consummated, a firmly underwritten offering of Scilex Holding capital stock on a major stock exchange that meets certain requirements and includes the Stock Consideration, then holders of the Stock Consideration may collectively elect to exchange, during the 60-day period commencing the date that is the 18 month anniversary of the Merger Closing (the "Share Exchange"), the Stock Consideration for shares of the Company's common stock with a value of $55.0 million based on a price per share of the Company's common stock equal to the greater of (a) the 30-day trailing volume weighted average price of one share of the Company's common stock as reported on The Nasdaq Stock Market LLC as of the consummation of the Share Exchange and (b) $5.55 (subject to adjustment for any stock dividend, stock split, stock combination, reclassification or similar transaction).

Pursuant to the terms of the Exchange Agreement, and subject to the limitations contained therein, within 30 days following consummation of the Share Exchange (if it occurs at all), the Company agreed to prepare and file with the SEC a registration statement to enable the public resale on a delayed or continuous basis of the shares of the Company's common stock issued in the Share Exchange (the "Registration Statement") and use its commercially reasonable efforts to maintain the effectiveness of such Registration Statement for up to three years thereafter. In the Exchange Agreement, the Company has also agreed to indemnify the applicable Semnur Equityholders and their affiliates for certain liabilities related to such Registration Statement, including certain liabilities arising under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Jaisim Shah, a member of the Company's Board of Directors, was Semnur's Chief Executive Officer, a member of its Board of Directors and a stockholder of Semnur prior to the acquisition transaction.

The transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in a single asset. Under the Merger Agreement, Scilex Holding acquired the Semnur SEMDEXA™ (SP-102) technology for consideration valued at approximately $70.0 million, excluding contingent consideration, transaction costs of $3.1 million and liabilities assumed of $4.2 million, which was allocated based on the relative fair value of the assets acquired. The $70.0 million of consideration consisted of $15.0 million in cash and shares of Scilex Holding valued at $55.0 million. No contingent consideration was recorded as of December 31, 2019 since the related regulatory approval milestones are not deemed probable until they actually occur. As a result, approximately $75.3 million was expensed as a component of acquired in-process research and development.

2018 Acquisition

Acquisition of Sofusa®

In July 2018, the Company entered into an Asset Purchase Agreement (the "Sofusa Purchase Agreement") with Kimberly-Clark Corporation ("KCC"); Kimberly-Clark Global Sales, LLC ("KCCGS"); and Kimberly-Clark Worldwide, Inc. ("KCCW" and together with KCC and KCCGS, "Kimberly-Clark") pursuant to which, among other things, the Company acquired certain of Kimberly-Clark's assets related to micro-needle drug delivery technology, including the Sofusa® platform (the "Sofusa Assets") and related fixed assets, and assumed certain of Kimberly-Clark's liabilities related to the Sofusa Assets (the "Sofusa Acquisition"). The closing of the Sofusa Acquisition (the "Sofusa Closing") occurred on July 2, 2018. At the

Sofusa Closing, the Company paid $10.0 million and agreed to pay additional consideration to Kimberly-Clark upon the achievement of certain regulatory and net sales milestones, as well as a percentage in the low double-digits of any non-royalty amounts received by the Company in connection with any license, sale or other grant of rights by the Company to develop or commercialize the Sofusa Assets (all such additional consideration, the "Sofusa Contingent Consideration"). Under the Sofusa Purchase Agreement, the aggregate amount of the Sofusa Contingent Consideration payable by the Company will not exceed $300.0 million. The Company also agreed to pay Kimberly-Clark a low single-digit royalty on all net sales with respect to the first five products developed by the Company or its licensees that utilizes intellectual property included in the Sofusa Assets. The transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in a single asset. Under the Asset Purchase Agreement, the Company acquired the Sofusa DoseDisc micro-needle technology for cash consideration of $10.0 million which was allocated based on the relative fair value of the assets acquired. No contingent consideration was recorded as of December 31, 2019 since the related regulatory approval milestones are not deemed probable until they actually occur. As a result, $9.5 million was expensed as a component of acquired in-process research and development and the remaining $0.5 million was recorded primarily to fixed assets.

2017 Acquisition

Acquisition of Virttu Biologics Limited

In April 2017, the Company entered into a Share Purchase Agreement with TNK Therapeutics, Inc., a majority-owned subsidiary of the Company ("TNK"), Virttu Biologics Limited ("Virttu"), the shareholders of Virttu (the "Virttu Shareholders") and Dayspring Ventures Limited, as the representative of the Virttu Shareholders, pursuant to which, among other things, TNK acquired from the Virttu Shareholders 100% of the outstanding ordinary shares of Virttu. Virttu focuses on the development of oncolytic viruses that infect and selectively multiply in and destroy tumor cells without damaging healthy tissue.

The consolidated financial statements include the results of operations from this transaction, which have been accounted for as a business combination. The valuation of the acquired assets and liabilities resulted in the recognition of identifiable assets of approximately $16.0 million comprised mainly of in-process research and development of approximately $15.4 million, deferred tax liabilities of $0.8 million and goodwill of approximately $1.4 million. The results of Virttu's operations are not significant to the Company's consolidated financial statements.

The total acquisition consideration was as follows: (1) an issuance of 1,795,011 shares of the Company's common stock to the Virttu Shareholders on April 27, 2018 for a value of $11.3 million and (2) $9.9 million payable in cash. An additional $10.0 million contingent consideration was payable upon the achievement of certain regulatory milestones, which, at the acquisition date, was valued at $1.0 million and is not significant to the Company's consolidated financial statements as of December 31, 2019. During the year ended December 31, 2019, the Company recorded a $10.4 million gain related to the settlement of the acquisition consideration payable associated with the Virttu acquisition.

4. Fair Value Measurements

The following table presents the Company's financial assets and liabilities that are measured at fair value on a recurring basis (in thousands):

	Fair Value Measurements at December 31, 2019			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash and cash equivalents	$ 22,521	$ 22,521	$ —	$ —
Restricted cash	58,248	58,248	—	—
Total assets	$ 80,769	$ 80,769	$ —	$ —
Liabilities:				
Derivative liabilities	$ 8,800	$ —	$ —	$ 8,800
Derivative liabilities - Non-current	35,000	—	—	35,000
Acquisition consideration payable	908	—	—	908
Acquisition consideration payable, non-current	39	—	—	39
Total liabilities	$ 44,747	$ —	$ —	$ 44,747

	Fair Value Measurements at December 31, 2018			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash and Cash Equivalents	$ 158,738	$ 158,738	$ —	$ —
Restricted cash	54,592	54,592	—	—
Total assets	$ 213,330	$ 213,330	$ —	$ —
Liabilities:				
Acquisition consideration payable	$ 11,312	$ —	$ —	$ 11,312
Acquisition consideration payable, non-current	725	—	—	725
Total liabilities	$ 12,037	$ —	$ —	$ 12,037

The Company's financial assets and liabilities carried at fair value are comprised of cash, cash equivalents, restricted cash and acquisition consideration payable. Cash and cash equivalents consist of money market accounts and bank deposits which are highly liquid and readily tradable. These investments are valued using inputs observable in active markets for identical securities. The fair value of the contingent consideration is measured on a recurring basis using significant unobservable inputs (Level 3). Contingent consideration is measured using the income approach and discounting to present value the contingent payments expected to be made based on assessment of the probability that the company would be required to make such future payment.

During the year ended December 31, 2019, the fair value remeasurement adjustments related to the Company’s acquisitions resulted in a decrease to the contingent consideration liabilities by $0.7 million. The Company also recorded a $10.4 million gain related to the settlement of the acquisition consideration payable associated with the Virttu acquisition as described in Note 3.

During the year ended December 31, 2018, the fair value remeasurement adjustments related to the Company’s acquisitions resulted in an increase to the contingent consideration liabilities by $9.6 million. The Company recorded $51.9 million in settlements of contingent consideration primarily related to such liabilities, which included the settlements of Scilex Pharma and BDL liabilities for $38.2 million and $2.3 million, respectively, and the $11.3 million partial settlement of the Virttu financing milestone in common stock of the Company.

The contingent consideration is measured at fair value using significant unobservable inputs (Level 3). The following tables includes a summary of the changes to contingent consideration liabilities during the years ended December 31, 2019, 2018 and 2017:

(in thousands)	2019
Beginning Balance at December 31, 2018	$ 12,037
Re-measurement of Fair Value	(736)
Settlements of contingent consideration	(10,354)
Ending Balance at December 31, 2019	$ 947

(in thousands)	2018
Beginning Balance at December 31, 2017	$ 54,272
Re-measurement of Fair Value	9,644
Settlements of contingent consideration	(51,879)
Ending Balance at December 31, 2018	$ 12,037

(in thousands)	2017
Beginning Balance at December 31, 2016	$ 48,362
Scilex acquisition adjustment	(6,500)
Acquisition consideration payable - current year acquisitions	12,807
Contingent consideration (Non-current) - current year acquisitions	983
Payment of shares for contingent consideration	(1,380)
Ending Balance at December 31, 2017	$ 54,272

The principal significant unobservable inputs used in the valuations of the contingent considerations are the discount rates, and probabilities assigned to scenario outcomes. An increase in the discount rate will cause a decrease in the fair value of the contingent consideration. Conversely, a decrease in the discount rate will cause an increase in the fair value of the contingent consideration. An increase in the probabilities assigned to certain scenarios will cause the fair value of contingent consideration to increase. Conversely, a decrease in the probabilities assigned to certain scenarios will cause the fair value of contingent considerations to decrease.

Derivative liabilities

The Company recorded a loss on derivative liabilities of $36.8 million for the year ended December 31, 2019, which was primarily attributed to compound derivative liabilities associated with the Scilex Notes resulting from revised sales forecasts, probabilities of a qualified IPO event and obtaining marketing approval for SP-103. The compound derivative liabilities consist of the fair value of embedded features including 1) a contingent increase in the applicable percentage of net sales for principal payment; 2) additional installment principal payments; 3) accelerated repayment upon delayed receipt of marketing approval; 4) accelerated repayment upon a Scilex Holding IPO (Note 9); and 5) tax indemnification obligations with respect to foreign note holders. As of December 31, 2019, the fair value of the derivative liabilities is estimated using the discounted cash flow method under the income approach combined with a Monte Carlo simulation model. This involves significant Level 3 inputs and assumptions including an 8% risk adjusted net sales forecast, an effective debt yield of 19.7% and estimated probabilities of 55% and 100% of not obtaining marketing approval before July 1, 2023 and March 31, 2021, respectively, and an estimated high probability of a Scilex Holding IPO that satisfies certain valuation thresholds.

The Company determined that the contingent acceleration feature of the Early Conditional Loan (as defined in Note 9) represents an embedded derivative liability that met the criteria for bifurcation under ASU No. 2017-12, *Derivatives and hedging*. The fair value of the derivative liability involved significant Level 3 inputs and assumptions, including estimated probabilities of satisfying certain commercial and financial milestones and is estimated using a with and without discounted cash flow approach applying a discount rate of approximately 41.6%. The Company recorded a debt discount for the fair value of the derivative liability of $7.0 million on the issuance date. The debt discount attributed to the derivative liability is being amortized over the remaining term of the Term Loans (as defined in Note 9) and is recorded as interest expense in the consolidated statement of operations. The Company performs a mark-to-market assessment for the derivative liability related to the contingent acceleration feature of the Early Conditional Loan each reporting period and recorded a loss on derivative liabilities of $1.8 million for the year ended December 31, 2019. The Company also recorded a loss on derivative liabilities associated with the 2019 Warrants (as defined in Note 9) of $4.3 million on the issuance date, as the 2019 Warrants were issued with the Amendment (See Note 9). Further, the derivative liability associated with the 2019 Warrants was reclassified to additional-paid-in-capital upon issuance of the 2019 Warrants.

The following table includes a summary of the derivative liabilities measured at fair value using significant unobservable inputs (Level 3) during the year ended December 31, 2019:

(in thousands)	Fair Value
Beginning Balance at December 31, 2018	$ —
Additions	6,996
Re-measurement of Fair Value	36,804
Ending Balance at December 31, 2019	$ 43,800

5. Property and Equipment

Property and equipment consisted of the following as of December 31, 2019 and 2018 (in thousands):

	December 31,	
	2019	2018
Furniture and fixtures	$ 1,315	$ 1,127
Office equipment	700	632
Machinery and lab equipment	33,192	27,690
Leasehold improvements	13,161	9,001
Construction in progress	3,855	1,221
	52,223	39,671
Less accumulated depreciation	(22,335)	(15,287)
	$ 29,888	$ 24,384

Depreciation expense for the years ended December 31, 2019, 2018 and 2017 was $7.0 million, $6.0 million and $4.5 million, respectively.

6. Investments

The Company's cost method investments primarily include an ownership interest in ImmunityBio, Inc., NantBioScience, Inc. ("NantBioScience"), Celularity Inc. The Company's equity method investments primarily include an ownership interest in Immunotherapy NANTibody, LLC ("NANTibody"), NantCancerStemCell, LLC ("NantStem") and ImmuneOncia Therapeutics, LLC.

No impairment losses were recorded on the Company's cost method investments during the years ended December 31, 2019, 2018 and 2017. A loss related to other-than-temporary impairment of $0.5 million was recognized for the equity investment in NantStem for the year ended December 31, 2018.

NANTibody

In 2013, the Company acquired IgDraSol Inc. ("IgDraSol"), a private company focused on the development of oncologic agents for the treatment of cancer, from a third party unrelated to the NantWorks, LLC ("NantWorks") affiliated entities for 3 million shares of the Company's common stock and $380,000 of cash for a total purchase price of $29.1 million. This transaction included the acquisition of IgDraSol's lead compound, Cynviloq™, a micellar diblock copolymeric paclitaxel formulation drug product.

In May 2015, the Company entered into an agreement with NantPharma, LLC ("NantPharma"), a NantWorks company, pursuant to which the Company sold to NantPharma all of its equity interests in IgDraSol, which continued to hold the rights to Cynviloq™. Pursuant to the agreement, NantPharma paid the Company an upfront fee of $90.1 million, of which $60.0 million was required to be used by the Company to fund two joint ventures, as described below.

In April 2015, the Company and NantCell, a subsidiary of NantWorks, LLC ("NantWorks"), a private company owned by Dr. Patrick Soon-Shiong, established a new entity called Immunotherapy NANTibody, LLC ("NANTibody") as a stand-alone biotechnology company with $100.0 million initial joint funding. NantCell owns 60% of the equity interest of NANTibody and agreed to contribute $60.0 million to NANTibody. The Company owns 40% of NANTibody and in July 2015, the Company had NantPharma, LLC ("NantPharma") contribute its portion of the initial joint funding of $40.0 million to NANTibody from the proceeds of the sale of IgDraSol, Inc. ("IgDraSol"). Additionally, the Company and NantCell were allowed to appoint three and two representatives, respectively, to NANTibody's five-member Board of Directors. NANTibody will focus on accelerating the development of multiple immuno-oncology mAbs for the treatment of cancer, including but not limited to anti-PD-1, anti-PD-L1, anti-CTLA4mAbs, and other immune-check point antibodies as well as ADCs and bispecific antibodies.

NANTibody had been formed to advance pre-clinical and clinical immunology assets contributed by the Company and NantCell. The Company continues to hold 40% of the outstanding equity of NANTibody and NantCell holds the remaining 60%. Until July 2, 2017, NANTibody held approximately $100.0 million of cash and cash equivalents, and the Company recorded its investment in NANTibody at approximately $40.0 million. As an equity method investment, the Company's ratable portion of 40% of money expended for the development of intellectual property assets held by NANTibody would be reflected within income (loss) on equity method investments in its statement of operations. As a result of limited spending at NANTibody, the cash on hand at NANTibody remained at approximately $100.0 million since the inception of the NANTibody

joint venture until July 2, 2017. Further, the Company's equity method investment in NANTibody remained at approximately $40.0 million until July 2, 2017.

The financial statements of NANTibody are not received sufficiently timely for the Company to record its portion of earnings or loss in the current financial statements and therefore the Company reports its portion of earnings or loss on a quarter lag.

In February 2018, NANTibody notified the Company that on July 2, 2017, NANTibody acquired all of the outstanding equity of IgDraSol in exchange for $90.1 million in cash. NANTibody purchased IgDraSol from NantPharma, LLC, which is controlled by NantWorks, an entity with a controlling interest in NantCell and NantPharma.

Although the Company has had a designee serving on the Board of Directors of NANTibody since the formation of NANTibody in April 2015, and although the Company has held 40% of the outstanding equity of NANTibody since NANTibody's formation, neither the Company nor its director designee was given any advance notice of NANTibody's purchase of IgDraSol or of any board meeting or action to approve such purchase. As such, the Company's designee on NANTibody's Board of Directors was not given an opportunity to consider or vote on the transaction as a director and the Company was not given an opportunity to consider or vote on the transaction in its position as a significant (40%) equity holder of NANTibody.

As a result of the July 2, 2017 purchase of IgDraSol, NANTibody's cash and cash equivalents were reduced from $99.6 million as of June 30, 2017 to $9.5 million as of September 30, 2017, and NANTibody's contributed capital was reduced from $100.0 million as of June 30, 2017 to $10.0 million as of September 30, 2017, to effect the transfer of IgDraSol from NantPharma to NANTibody. No additional information was provided to the Company to explain why NANTibody's total assets as of September 30, 2017 were reduced by approximately $90.1 million. The Company requested, but did not receive, additional information from NANTibody for purposes of supporting the value of IgDraSol, including any information regarding clinical advancements in the entity since the sale of IgDraSol by the Company in May 2015.

Prior to the communication of the transfer of IgDraSol from NantPharma to NANTibody, the Company relied on the cash and cash equivalents of NANTibody for purposes of determining the value of its investment in NANTibody, which capital was expended by NANTibody to acquire IgDraSol on July 2, 2017. As a result of the transfer of IgDraSol, the Company reassessed the recoverability of its equity method investment in NANTibody as of July 2, 2017. In doing so, the Company considered the expected outcomes for the intellectual property assets held by NANTibody as of July 2, 2017. As a result of the lack of evidence of any development activity associated with any of the assets held in NANTibody, given the passage of time since the formation of the joint venture, many competitive products from other drug developers worldwide have advanced and/or commercialized for the targeted disease indications of the assets held in NANTibody, and given the Company's minority interest in NANTibody (the investee), the Company concluded that it does not have the ability to recover the carrying amount of the investment and an other-than-temporary decline in the value of the investment had occurred. Accordingly, an impairment was recorded to the Company's equity method investment in NANTibody for the three and nine months ended September 30, 2017. The fair value of the Company's investment in NANTibody was measured at fair value on July 2, 2017 using significant unobservable inputs (Level 3) due to the determination of fair value requiring significant judgment, including the potential outcomes of the intellectual property assets held by NANTibody. For these reasons, fair value was determined by applying the Company's 40% equity interest in NANTibody to the remaining cash and cash equivalents, which resulted in an impairment of $36.0 million. The impairment resulted in a revised carrying value of the Company's investment in NANTibody of $3.7 million which approximates its ratable 40% ownership of the cash maintained by NANTibody expected to be used for future research and development. As of December 31, 2019 and 2018, the carrying value of the Company's investment in NANTibody was approximately $2.5 million and $3.4 million, respectively.

NANTibody recorded net loss of $2.4 million, $0.7 million and $1.1 million for the twelve months ended September 30, 2019, 2018 and 2017, respectively. The Company recorded its portion of loss from NANTibody in (loss) income on equity investments on its consolidated statements of operations for the twelve months ended December 31, 2019, 2018 and 2017. As of September 30, 2019, NANTibody had $7.3 million in current assets, $1.0 million in current liabilities, $0.2 million in noncurrent assets and no noncurrent liabilities. As of September 30, 2018, NANTibody had $9.7 million in current assets, $0.8 million in current liabilities, no noncurrent assets and no noncurrent liabilities.

NantStem

In July 2015, the Company and NantBioScience, a subsidiary of NantWorks, established a new entity called NantCancerStemCell, LLC ("NantStem") as a stand-alone biotechnology company with $100.0 million initial joint funding. As initially organized, NantBioScience was obligated to make a $60.0 million cash contribution to NantStem for a 60% equity

interest in NantStem, and the Company was obligated to make a $40.0 million cash contribution to NantStem for a 40% equity interest in NantStem. Fifty percent of these contributions were funded in July 2015 and the remaining amounts were to be made by no later than September 30, 2015. The Company had NantPharma contribute its portion of the initial joint funding of $20.0 million to NantStem from the proceeds of the sale of IgDraSol. Pursuant to a Side Letter dated October 13, 2015, the NantStem joint venture agreement was amended to relieve the Company of the obligation to contribute the second $20.0 million payment, and its ownership interest in NantStem was reduced to 20%. NantBioScience's funding obligations were unchanged. The Side Letter was negotiated at the same time the Company issued a call option on shares of NantKwest that it owned to Cambridge, a related party to NantBioScience.

A loss related to other-than-temporary impairment of $0.5 million was recognized for the equity investment in NantStem for the year ended December 31, 2018. There was no loss related to other-than-temporary impairment recognized for the equity investment for the year ended December 31, 2017.

The Company is accounting for its interest in NantStem as an equity method investment, due to the significant influence the Company has over the operations of NantStem through its board representation and 20% voting interest. The Company's investment in NantStem is reported in equity method investments on its consolidated balance sheets and its share of NantStem's loss is recorded in loss on equity investments on its consolidated statement of operations. As of December 31, 2019 and 2018, the carrying value of the Company's investment in NantStem was approximately $17.9 million and $18.0 million, respectively.

The financial statements of NantStem are not received sufficiently timely for the Company to record its portion of earnings or loss in the current financial statements and therefore the Company reports its portion of earnings or loss on a quarter lag.

NantStem recorded a net loss of $0.9 million and $0.7 million for the twelve months ended September 30, 2019 and 2018, respectively, and net income of $0.7 million for the twelve months ended September 30, 2017. The Company recorded its portion of (loss) income from NantStem in (loss) income on equity investments on its consolidated statements of operations for the twelve months ended December 31, 2019, 2018 and 2017. As of September 30, 2019, NantStem had $75.9 million in current assets and $0.2 million in current liabilities and $4.7 million noncurrent assets and no noncurrent liabilities. As of September 30, 2018, NantStem had $74.1 million in current assets, $0.1 million in current liabilities, $6.9 million in noncurrent assets and no noncurrent liabilities.

7. Goodwill and Intangible Assets

The Company had goodwill of $38.3 million for each of years ended December 31, 2019 and 2018. The Company performed a qualitative test for goodwill impairment by segment during the fourth quarter of 2019. Based upon the results of the qualitative testing the Company concluded that it is more-likely-than-not that the fair values of the Company's goodwill was in excess of its carrying value and therefore performing the first step of the two-step impairment test was unnecessary. No goodwill impairment was recognized for the years ended December 31, 2019, 2018 and 2017.

Commencing January 1, 2019, the Company re-segmented its business into two new operating segments: the Sorrento Therapeutics segment and the Scilex segment. These segments are the Company's reporting units, and are the level at which the Company conducts its goodwill impairment evaluations. Goodwill was allocated to the Sorrento Therapeutics and the Scilex operating segments on a relative fair value basis. Goodwill for the Sorrento Therapeutics segment and Scilex segment was $31.6 million and $6.7 million, respectively, as of December 31, 2019.

The Company's intangible assets, excluding goodwill, include acquired license and patent rights, core technologies, customer relationships and acquired in-process research and development. Amortization for the intangible assets that have finite

useful lives is generally recorded on a straight-line basis over their useful lives. A summary of the Company's identifiable intangible assets as of December 31, 2019 and 2018 is as follows (in thousands):

		December 31, 2019		
	Weighted Average Amortization Period (Years)	Gross Carrying Amount	Accumulated Amortization	Intangibles, net
Customer relationships	6	$ 1,585	$ 1,401	$ 184
Acquired technology	19	3,410	1,060	2,350
Acquired in-process research and development	15	36,300	1,828	34,472
Patent rights	15	32,720	6,922	25,798
Assembled workforce	5	605	101	504
Total intangible assets		$ 74,620	$ 11,312	$ 63,308

		December 31, 2018		
	Weighted Average Amortization Period (Years)	Gross Carrying Amount	Accumulated Amortization	Intangibles, net
Customer relationships	6	$ 1,585	$ 1,373	$ 212
Acquired technology	19	3,410	885	2,525
Acquired in-process research and development	15	35,834	366	35,468
Patent rights	15	32,720	4,742	27,978
Assembled workforce	5	105	5	100
Total intangible assets		$ 73,654	$ 7,371	$ 66,283

As of December 31, 2019, the remaining weighted average life for identifiable intangible assets is 15 years. Aggregate amortization expense was $3.9 million and $3.0 million for the year ended December 31, 2019 and 2018, respectively.

The Company intends to begin amortization of acquired in-process research and development costs associated with the Virttu business combination upon commercialization of products. The acquired in-process research and development is reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable. The Company recorded an impairment charge of $1.8 million associated with Virttu IPR&D for the quarter ended December 31, 2018.

Estimated future amortization expense related to intangible assets at December 31, 2019 is as follows (in thousands):

Years Ending December 31,	Amount
2020	$ 3,966
2021	5,020
2022	5,020
2023	5,015
2024	4,924
Thereafter	39,363
Total	$ 63,308

8. Significant Agreements and Contracts

In August 2015, the Company entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar and biobetter antibodies from Mabtech Limited. Under the terms of the agreement, the Company will develop and market four mAbs for the North American, European and Japanese markets. The Company made an initial license payment of $10.0 million and in February 2016, paid an additional $10.0 million license payment, both of which were recognized as acquired in-process research and development expense in the consolidated statements of operations as the Company determined there was no alternative future use for the license.

In June 2016, the Company agreed to accelerate and pay a $30.0 million milestone license payment which has been recognized as acquired in-process research and development expense in the consolidated statements of operations, in exchange for the purchase by Mabtech Limited in June 2016, of $10.0 million of common stock and warrants.

In December 2017, the Company agreed to accelerate and, as a result, paid a $25.0 million milestone license payment, which has been recognized as acquired in-process research and development expense in the consolidated statements of operations. The amended agreement includes additional milestone payments totaling $125.0 million payable following the completion of the technology transfer from Mabtech Limited and for payables to extend the license agreement. The Company is not obligated to extend the license agreement. Accordingly, the additional future milestone payments have not yet been accrued as of December 31, 2019.

In April 2015, the Company and NantCell entered into a license agreement. Under the terms of the agreement the Company granted an exclusive license to NantCell covering patent rights, know-how, and materials related to certain antibodies, ADCs and two CAR-TNK products. NantCell agreed to pay a royalty not to exceed five percent (5%) to the Company on any net sales of products (as defined) from the assets licensed by the Company to NantCell. In addition to the future royalties payable under this agreement, NantCell paid an upfront payment of $10.0 million to the Company and issued 10 million shares of NantCell common stock to the Company valued at $100.0 million based on a recent equity sale of NantCell common stock to a third party. As of December 31, 2019, the Company had not yet provided all of the items noted in the agreement, including research services for and on behalf of NantCell, and therefore has recorded the entire upfront payment and value of the equity interest received as deferred revenue. Specifically, only a portion of the materials associated with the licensed assets have been delivered while the majority of the licensed assets remain undelivered and the related research activities are still to be performed. The Company will recognize the upfront payment and the value of the equity interest received over the period beginning with the commencement of the last item delivered. The Company's ownership interest in NantCell does not provide the Company with control or the ability to exercise significant influence; therefore the $100.0 million investment is carried at cost in the consolidated balance sheets and evaluated for other-than-temporary impairment on a quarterly basis.

In November 2019, the Company entered into short-term working capital funding arrangements (the "Arrangements") in which the Company received proceeds of approximately $8.0 million, for a fee of 5% per annum. As these Arrangements are short-term in nature, the Company recorded an $8.0 million offset within the current portion of debt. Additionally, the Company provided security deposits in an aggregate amount of approximately $8.5 million (RMB 60.0 million), which is included in prepaid expenses and other current assets in the consolidated balance sheets and is presented as a cash outflow within other acquisitions and investments under investing activities in the consolidated statements of cash flows as of December 31, 2019.

9. Debt

Loan and Security Agreement with Hercules Capital, Inc.

In November 2016, the Company entered into a Loan and Security Agreement (the "Hercules Loan Agreement") with Hercules Capital, Inc. ("Hercules"), as a lender and agent for several banks and other financial institutions or entities from time to time party to the Hercules Loan Agreement for a term loan of up to $75.0 million, which would have matured on December 1, 2020. The proceeds of the Term Loan were used for general corporate purposes and coincided with the repayment of the outstanding debt financing arrangement with Oxford Finance LLC and Silicon Valley Bank.

In December 2017, the Company paid off all remaining obligations owing under, and terminated, the Hercules Loan Agreement. The secured interests under the Hercules Loan Agreement were terminated in connection with the Company's discharge of indebtedness thereunder. In connection with the extinguishment of the Hercules Loan Agreement in 2017, the Company recorded a loss on debt extinguishment of $4.3 million on the extinguishment of debt was recorded representing the difference between the reacquisition price of debt and the net carrying amount of the loan as of December 21, 2017.

2017 Securities Purchase Agreement in Private Placement

In December 2017, the Company entered into a Securities Purchase Agreement with certain accredited investors (collectively, the "December 2017 Purchasers"). Pursuant to the December 2017 Securities Purchase Agreement the Company issued and sold to the December 2017 Purchasers, in a private placement transaction, (1) convertible promissory notes of $50,000,000 (the "December 2017 Notes"), which accrued simple interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of (a) December 21, 2022, and (b) the date of the closing of a change in control, and (2) warrants (the

"December 2017 Warrants") to purchase an aggregate of 12,121,210 shares of its common stock. Each December 2017 Warrant has an exercise price of $2.61 per share, became exercisable in June 2018 and has a term of five and a half years.

In May 2018, the December 2017 Purchasers converted in full the outstanding principal and accrued interest under the December 2017 Notes into 22,038,565 shares of the Company's common stock and the Company paid to the December 2017 Purchasers cash in an aggregate amount of $1.0 million in accrued but unpaid interest. The unamortized discount remaining at the date of conversion of $44.3 million was recognized as interest expense.

2018 Securities Purchase Agreement in Private Placement and Amendment to Warrants

In March 2018, the Company entered into a Securities Purchase Agreement (the "March 2018 Securities Purchase Agreement") with certain accredited investors (the "March 2018 Purchasers"). Pursuant the March 2018 Securities Purchase Agreement, the Company agreed to issue and sell to the March 2018 Purchasers, in a Private Placement (the "March 2018 Private Placement"), (1) convertible promissory notes in an aggregate principal amount of $120,500,000 (the "Notes"), and (2) warrants to purchase 8,591,794 shares of the common stock of the Company (the "Warrants"). On June 13, 2018, the Company entered into an amendment (the "June 2018 Amendment") to the March 2018 Securities Purchase Agreement. Under the terms of the June 2018 Amendment, the Company and the March 2018 Purchasers agreed that the aggregate principal amount of the Notes was reduced to $37,848,750 and that the aggregate number of shares of Common Stock issuable upon exercise of the Warrants was reduced to 2,698,662, and also agreed to certain other adjustments to the threshold principal amount of the Notes required to remain outstanding in order for certain rights and obligations to apply to the Notes.

In June 2018, pursuant to the March 2018 Securities Purchase Agreement, as amended by the June 2018 Amendment, the Company issued and sold to the March 2018 Purchasers, in the March 2018 Private Placement (1) Notes in an aggregate principal amount of $37,848,750, and (2) Warrants to purchase an aggregate of 2,698,662 shares of Common Stock. The Notes accrue interest at a rate equal to 5.0% per annum and mature upon the earlier to occur of June 13, 2023 and the date of the closing of a change of control (the "Maturity Date"). At any time and from time to time before the Maturity Date, each March 2018 Purchaser shall have the option to convert any portion of the outstanding principal amount of such March 2018 Purchaser's Note that is equal to or greater than the lesser of: (1) $4,000,000, and (2) the then-outstanding principal amount of such March 2018 Purchaser's Note into shares of common stock at a price per share of $7.0125, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions. Each Warrant has an exercise price of $3.28 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, became exercisable on December 11, 2018 and has a term of five and a half years from the date of issuance. See Note 1 for discussion of the Company's policies for accounting for debt with detachable warrants. In connection with the issuance of the Notes and the Warrants, the Company recorded a debt discount of approximately $21.6 million based on an allocation of proceeds to the Warrants of approximately $9.6 million and a beneficial conversion feature of approximately $12.0 million, before issuance costs. The Company accounts for the debt at amortized cost and amortizes the debt discount to interest expense using the effective interest method over the expected term of the Notes. The fair value of the Notes was estimated using a lattice model with Level 3 inputs including the historical stock price volatility, risk-free interest rate, and debt yield.

In November 2018, the Company amended the Warrants to reduce the exercise price per share of its common stock thereunder from $8.77 to $3.28. The amendment of the Warrants resulted in a loss on debt extinguishment of $1.9 million representing the incremental fair value of the modified Warrants along with the difference between the fair value and carrying value of the Notes at the modification date. The Company determined that the amendment resulted in an extinguishment at the modification date. As a result, the Company recorded a loss on debt extinguishment for the difference between the fair value of $23.1 million and the carrying value of $17.0 million, or $6.1 million.

Borrowings under the Notes consisted of the following (in thousands):

Face value of loan	$	37,849
Unamortized debt discount		(14,804)
Accretion of debt discount		515
Balance at December 31, 2018	$	23,560

Interest expense recognized for stated interest on the Notes totaled $1.6 million and $1.0 million for the twelve months ended December 31, 2019 and 2018, respectively. The amount of debt discount and debt issuance costs included in interest expense was approximately $1.9 million and $0.5 million for the twelve months ended December 31, 2019 and 2018, respectively.

On November 8, 2019, the Company amended the Notes to provide that (a) the conversion price for the Notes was reduced from $7.0125 per share to $1.70 per share, and (b) upon the conversion of any portion of the outstanding principal amount of the Notes, all accrued but unpaid interest on such portion of the principal amount being converted shall also be converted into shares of the Company's common stock at $1.70 per share. Pursuant to the Notes, as amended, the March 2018 Purchasers agreed to convert the full principal amount, plus all accrued but unpaid interest into shares of the Company's common stock on November 8, 2019. The Company accounted for the conversion of the Notes as an induced conversion of debt and recorded a loss on settlement of debt of $27.8 million.

2018 Purchase Agreements and Indenture for Scilex

On September 7, 2018, Scilex Pharma entered into Purchase Agreements (the "2018 Purchase Agreements") with certain investors (collectively, the "Scilex Note Purchasers") and the Company. Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex Pharma, among other things, issued and sold to the Scilex Note Purchasers senior secured notes due 2026 in an aggregate principal amount of $224,000,000 (the "Scilex Notes") for an aggregate purchase price of $140,000,000 million (the "Scilex Notes Offering"). In connection with the Scilex Notes Offering, Scilex Pharma also entered into an Indenture (the "Indenture") governing the Scilex Notes with U.S. Bank National Association, a national banking association, as trustee (the "Trustee") and collateral agent (the "Collateral Agent"), and the Company. Pursuant to the Indenture, the Company agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex Pharma under the Indenture (the "Guarantee").

The net proceeds of the Offering were approximately $89.3 million, after deducting the Offering expenses payable by Scilex Pharma and funding a segregated reserve account ($20.0 million) (the "Reserve Account") and a segregated collateral account ($25.0 million) (the "Collateral Account") pursuant to the terms of the Indenture. Funds in the Reserve Account will be released to Scilex Pharma upon receipt by the Trustee of an officer's certificate under the Indenture from Scilex Pharma confirming receipt of a marketing approval letter from the FDA with respect to SP-103 (the "Marketing Approval Letter") on or prior to July 1, 2023. Funds in the Collateral Account will be released upon receipt of a written consent authorizing such release from the holders of a majority in principal amount of the Scilex Notes issued, upon the occurrence and during the continuance of an event of default at the direction of the holders of a majority in principal amount of the Scilex Notes issued or upon the repayment in full of all amounts owed under the Scilex Notes.

The holders of the Scilex Notes will be entitled to receive quarterly payments of principal of the Scilex Notes equal to a percentage, in the range of 10% to 20% of the net sales of ZTlido for the prior fiscal quarter, beginning on February 15, 2019. If Scilex Pharma has not received the Marketing Approval Letter by March 31, 2021, the percentage of net sales payable shall be increased to be in the range of 15% to 25%. If actual cumulative net sales of ZTlido from October 1, 2022 through September 30, 2023 are less than 60% of a predetermined target sales threshold for such period, then Scilex Pharma will be obligated to pay an additional installment of principal of the Scilex Notes each quarter in an amount equal to an amount to be determined by reference to the amount of such deficiency.

The aggregate principal amount due under the Scilex Notes shall be increased by $28,000,000 on February 15, 2022 if actual cumulative net sales of ZTlido from the issue date of the Scilex Notes through December 31, 2021 do not equal or exceed 95% of a predetermined target sales threshold for such period. If actual cumulative net sales of ZTlido for the period from October 1, 2022 through September 30, 2023 do not equal or exceed 80% of a predetermined target sales threshold for such period, the aggregate principal amount shall also be increased on November 15, 2023 by an amount equal to an amount to be determined by reference to the amount of such deficiency.

The final maturity date of the Scilex Notes will be August 15, 2026. The Scilex Notes may be redeemed in whole at any time upon 30 days' written notice at Scilex Pharma's option prior to August 15, 2026 at a redemption price equal to 100% of the then-outstanding principal amount of the Scilex Notes. In addition, upon a change of control of Scilex Pharma (as defined in the Indenture), each holder of a Scilex Note shall have the right to require Scilex Pharma to repurchase all or any part of such holder's Scilex Note at a repurchase price in cash equal to 101% of the then-outstanding principal amount thereof.

The 2018 Purchase Agreements include the terms and conditions of the offer and sale of the Scilex Notes, representations and warranties of the parties, indemnification and contribution obligations and other terms and conditions customary in agreements of this type.

The Indenture governing the Scilex Notes contains customary events of default with respect to the Scilex Notes (including a failure to make any payment of principal on the Scilex Notes when due and payable), and, upon certain events of default occurring and continuing, the Trustee by notice to Scilex Pharma, or the holders of at least 25% in principal amount of the outstanding Scilex Notes by notice to Scilex Pharma and the Trustee, may (subject to the provisions of the Indenture)

declare 100% of the then-outstanding principal amount of the Scilex Notes to be due and payable. Upon such a declaration of acceleration, such principal will be due and payable immediately. In the case of certain events, including bankruptcy, insolvency or reorganization involving the Company or Scilex Pharma, the Scilex Notes will automatically become due and payable.

Pursuant to the Indenture, the Company and Scilex Pharma must also comply with certain covenants with respect to the commercialization of ZTlido, as well as customary additional affirmative covenants, such as furnishing financial statements to the holders of the Scilex Notes, minimum cash requirements and net sales reports; and negative covenants, including limitations on the following: the incurrence of debt; the payment of dividends, the repurchase of shares and under certain conditions making certain other restricted payments; the prepayment, redemption or repurchase of subordinated debt; a merger, amalgamation or consolidation involving Scilex Pharma; engaging in certain transactions with affiliates; and the making of investments other than those permitted by the Indenture.

Pursuant to a Collateral Agreement by and among Scilex Pharma, the Trustee and the Collateral Agent (the "Collateral Agreement"), the Scilex Notes will be secured by ZTlido and all of the existing and future property and assets of Scilex Pharma necessary for, or otherwise relevant to, now or in the future, the manufacture and sale of ZTlido, on a worldwide basis (exclusive of Japan), including, but not limited to, the intellectual property related to ZTlido, the marketing or similar regulatory approvals related to ZTlido, any licenses, agreements and other contracts related to ZTlido, and the current assets related to ZTlido such as inventory, accounts receivable and cash and any and all future iterations, improvements or modifications of such product made, developed or licensed (or sub-licensed) by Scilex Pharma or any of its affiliates or licensees (or sub-licensees) (including SP-103).

Pursuant to the terms of the Indenture, the Company issued an irrevocable standby letter of credit to Scilex Pharma (the "Letter of Credit"), which provides that, in the event that (1) Scilex Pharma does not hold at least $35,000,000 in unrestricted cash (which is inclusive of the amount in the Collateral Account) as of the end of any calendar month during the term of the Scilex Notes, (2) actual cumulative net sales of ZTlido from the issue date of the Scilex Notes through December 31, 2021 are less than a specified sales threshold for such period, or (3) actual cumulative net sales of ZTlido for any calendar year during the term of the Scilex Notes, beginning with the 2022 calendar year, are less than a specified sales threshold for such calendar year, Scilex Pharma as beneficiary of the Letter of Credit, will draw, and the Company will pay to Scilex Pharma, $35,000,000 in a single lump-sum amount as a subordinated loan. In the event that Scilex Pharma draws on, and the Company pays to Scilex Pharma, $35,000,000 in a single lump-sum amount as a subordinated loan, each holder of the Scilex Notes shall have the right to require the Company to purchase all or any part of such holder's outstanding Scilex Notes in the principal amount of, and at a purchase price in cash equal to, $25,000,000 multiplied by such holder's pro rata portion of the then-outstanding Scilex Notes. The Letter of Credit will terminate upon the earliest to occur of: (a) the repayment of the Scilex Notes in full, (b) the actual net sales of ZTlido for any calendar year during the term of the Scilex Notes exceeding a certain threshold, (c) the consummation of an initial public offering on a major international stock exchange by Scilex Pharma that satisfies certain valuation thresholds, and (d) the replacement of the Letter of Credit with another letter of credit in form and substance, including as to the identity and creditworthiness of issuer, reasonably acceptable to the holders of at least 80% in principal amount of outstanding Scilex Notes.

On October 1, 2019, Scilex Pharma, the Company, the Trustee and the Agent, and the beneficial owners of the Scilex Notes and the holders of such Scilex Notes listed on the signature pages thereto (the "Holders") entered into an omnibus amendment (the "Omnibus Amendment") to: (i) the Indenture, and (ii) that certain Irrevocable Standby Letter of Credit issued by the Company to Scilex Pharma.

Under the terms of the Omnibus Amendment, among other things, the defined term "Change of Control" was revised to include, in addition to certain events described in the Indenture, (i) prior to the consummation of an initial public offering by Scilex Holding (the "Scilex Holding IPO"), the Company ceasing to own, directly or indirectly, a majority of the total voting and economic power of the issued and outstanding capital stock that is entitled to vote in the election of the Board of Directors (the "Voting Stock") of Scilex Pharma, (ii) at any time following the consummation of the Scilex Holding IPO, Scilex Pharma becoming aware of the acquisition by any person or group acquiring, in a single or in a related series of transactions, by way of merger, amalgamation, consolidation or other business combination or purchase of beneficial ownership of a majority of the total voting power of the issued and outstanding Voting Stock of Scilex Pharma or Scilex Holding, and (iii) Scilex Holding failing at any time to own 100% of the capital stock of Scilex Pharma. The Omnibus Amendment also provides that Scilex Pharma will agree not to engage in or enter into any business other than the research, development, manufacture, sale, distribution, marketing, detailing, promotion, selling and securing of reimbursement of ZTlido and any future iterations, improvements or modifications thereof (the "Product"), on a worldwide basis (exclusive of Japan), and activities that are necessary for, or otherwise relevant to, the same, subject to certain exceptions. The Omnibus Amendment further provides that, if Scilex Holding fails to contribute $25.0 million of the proceeds of any Scilex Holding IPO to Scilex Pharma within three

business days following the closing of the issuance and sale of Scilex Holding's capital stock in the Scilex Holding IPO, such failure shall constitute an "Event of Default" under the Indenture.

In connection with the Omnibus Amendment, in the event of consummation of a Scilex Holding IPO that satisfies certain valuation thresholds, Scilex Pharma agreed to repurchase, from each holder of Scilex Notes, Scilex Notes in a principal amount equal to (i) $20.0 million multiplied by (ii) a fraction the numerator of which will be the then outstanding principal amount of the Scilex Notes held by such holder and the denominator of which will be the then outstanding principal amount of all of the outstanding Scilex Notes, at a purchase price in cash equal to 100% of the principal amount thereof (such repurchase, the "Effective Date Repurchase"). Pursuant to the Omnibus Amendment, the Holders agreed to release the funds in the Reserve Account for the purpose of consummating the Effective Date Repurchase and any remaining funds in the Reserve Account after the consummation of the Effective Date Repurchase will be released to Scilex Pharma by the Trustee and Agent. After the consummation of the Effective Date Repurchase, the right of the holders of the Scilex Notes to require Scilex Pharma to repurchase $20.0 million principal amount upon failure to receive the Marketing Approval Letter with respect to SP-103 by July 1, 2023 shall have no further force and effect and the Reserve Account shall be closed.

The Omnibus Amendment also modified the Letter of Credit to provide that one of the conditions that will terminate the Letter of Credit will be the consummation of a Scilex Holding IPO that satisfies certain valuation thresholds. The Omnibus Amendment will be effective upon the satisfaction of certain terms and conditions, including the consummation of the Effective Date Repurchase. The Omnibus Amendment will terminate if the Omnibus Amendment does not become effective on or prior to October 1, 2020. The Company accounted for the Omnibus Amendment as a debt modification under ASC Topic 470-50 as modified terms were no substantially different than the pre-modified terms. The Company recorded an additional $4.3 million debt discount in connection with the Omnibus Amendment as of October 1, 2019.

To estimate the fair value of the Scilex Notes, the Company uses the discounted cash flow method under the income approach, which involves significant Level 3 inputs and assumptions, combined with a Monte Carlo simulation as appropriate. The value of the debt instrument is based on the present value of future principal payments and the discounted rate of return reflective of the Company's credit risk.

Borrowings of the Scilex Notes consisted of the following (in thousands):

	December 31,	
	2019	**2018**
Face value of loan	$ 224,000	$ 224,000
Unamortized debt discount	(67,839)	(77,624)
Unamortized debt issuance costs	(4,360)	(5,313)
Payments	(2,334)	—
Carrying value	$ 149,467	$ 141,063
Estimated fair value	$ 150,800	$ 122,840

Future minimum payments under the Scilex Notes, based on a percentage of projected net sales of ZTlido are estimated as follows (in thousands):

Year Ending December 31,		
2020	$	7,543
2021		13,213
2022		20,133
2023		23,623
2024		24,804
Thereafter		132,350
Total future minimum payments		221,666
Unamortized debt discount		(67,839)
Unamortized capitalized debt issuance costs		(4,360)
Total Scilex Notes		149,467
Current portion		(7,543)
Long-term portion of Scilex Notes	$	141,924

Debt discount and debt issuance costs, which are presented as a direct reduction of the Scilex Notes in the consolidated balance sheets, are amortized as interest expense using the effective interest method. As principal repayments on the Scilex Notes are based on a percentage of net sales of ZTlido and SP-103, if the Marketing Approval Letter is received, the Company has elected to account for changes in estimated cash flows from future net sales prospectively. Specifically, a new effective interest rate will be determined based on revised estimates of remaining cash flows and changes in expected cash flows will be recognized prospectively. The imputed effective interest rate at December 31, 2019 was 8.12%. The amount of debt discount and debt issuance costs included in interest expense for the fiscal years ended December 31, 2019 and 2018 was approximately $15.0 million and $6.8 million, respectively.

The Company identified a number of embedded derivatives that require bifurcation from the Scilex Notes and were separately accounted for in the consolidated financial statements as derivative liabilities. Certain of these embedded features include default interest provisions, contingent rate increases, contingent put options, optional and automatic acceleration provisions and indemnified taxes. The Company recorded this derivative within its consolidated financial statements (See Note 4). The Company re-evaluates this assessment each reporting period.

2018 Oaktree Term Loan Agreement

In November 2018, the Company and certain of its domestic subsidiaries (the “Guarantors”) entered into a Term Loan Agreement (the “Loan Agreement”) with certain funds and accounts managed by Oaktree Capital Management, L.P. (collectively, the “Lenders”) and Oaktree Fund Administration, LLC, as administrative and collateral agent, for an initial term loan of $100.0 million (the “Initial Loan”) and a second tranche of $50.0 million, subject to the achievement of certain commercial and financial milestones between August 7, 2019 and November 7, 2019, and the satisfaction of certain customary conditions (the “Conditional Loan”). The Initial Loan matures on November 7, 2023 (the “Maturity Date”) and bears interest at a rate equal to the London Interbank Offered Rate ("LIBOR") plus the applicable margin, or 7%. The Initial Loan was funded on November 7, 2018. The net proceeds of the Initial Loan were approximately $91.3 million, after deducting estimated loan costs, commissions, fees and expenses, and will be used for general corporate purposes. In connection with the Loan Agreement, on November 7, 2018, the Company issued to the Lenders warrants to purchase 6,288,985 shares of the Company’s common stock (the “Initial Warrants”). The Initial Warrants have an exercise price per share of $3.28, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions and will be exercisable from May 7, 2019 through May 7, 2029. In connection with the Loan Agreement, on November 7, 2018, the Company and the Lenders entered into a Registration Rights Agreement (the “Registration Rights Agreement”) pursuant to which, among other things, the Company agreed to file one or more registration statements with the SEC for the purpose of registering for resale the Initial Warrant Shares and the shares of common stock issuable upon exercise of warrants that may be issued in connection with the Conditional Loan (the “Conditional Warrants”). Under the Registration Rights Agreement, the Company agreed to file a registration statement with the SEC registering all of the Initial Warrant Shares and the shares of common stock issuable upon exercise of the Conditional Warrants for resale by no later than the 45th day following the issuance of the Initial Warrants and the Conditional Warrants, respectively.

On May 3, 2019, the Company, the Guarantors and the Lenders and the Agent entered into an amendment (the "Amendment") to the Loan Agreement. Under the terms of the Amendment, among other things, the Lenders agreed to make available to the Company $20.0 million of the Conditional Loan, notwithstanding that the commercial and financial milestones had not occurred (the "Early Conditional Loan"). The Lenders also agreed to loan the Company the remaining $30.0 million of the Conditional Loan upon the satisfaction of the commercial and financial milestones (the "Remaining Conditional Loan" and, together with the Initial Loan and the Early Conditional Loan, the "Term Loans"). The Term Loans, other than the Early Conditional Loan, will mature on November 7, 2023. The Early Conditional Loan will mature on May 3, 2020; however, if the commercial and financial milestones have occurred on or prior to such date, the Early Conditional Loan will mature on November 7, 2023. The Term Loans may be prepaid by the Company, in whole or in part at any time, subject to a prepayment fee. Upon any prepayment or repayment of all or a portion of the Term Loans (including the Early Conditional Loan and the Remaining Conditional Loan), the Company agreed to pay the Lenders an exit fee equal to 1.25% of the principal amount paid or prepaid amounting to approximately $1.5 million. The Early Conditional Loan was funded on May 3, 2019.

The Company accounted for the Amendment as a debt modification and not a debt extinguishment under ASC Topic 470-50, as the modified terms were not substantially different from the terms of the Loan Agreement. The Company incurred approximately $0.8 million in fees directly related to the Amendment, which were expensed as incurred.

In connection with the Amendment, on May 3, 2019, the Company issued to the Lenders warrants to purchase an aggregate of 1,333,304 shares of the Company's common stock (the "2019 Warrants"). The 2019 Warrants have an exercise price per share of $3.94, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable from November 3, 2019 through November 3, 2029. The Company recorded a loss on derivative liabilities associated with the 2019 Warrants of $4.3 million on the issuance date.

The Loan Agreement provided that, in the event of an optional prepayment of all or any portion of the Term Loans prior to November 7, 2021, the Company would be obligated to pay a prepayment fee in an amount equal to the amount of interest that would have been paid on the principal amount of the Term Loans being prepaid for the period from and including the date of such prepayment to, but excluding, November 7, 2021, based on the interest rate in effect on the date of any such prepayment (the "Make-Whole Payment"), plus 3% of the principal amount of the Term Loans being so prepaid.

On December 6, 2019, the Company, the Guarantors and the Lenders and the Agent entered into an amendment ("Amendment No. 2") to the Loan Agreement. Under the terms of Amendment No. 2, the Lenders agreed that, in the event of an optional prepayment of all or any portion of the Term Loans on or prior to March 31, 2020, the prepayment fee will be equal to 3% of the principal amount of the Term Loans being prepaid, and the Company will not be required to pay any Make-Whole Payment. Pursuant to Amendment No. 2, the Company also agreed to certain financial milestones and to fund and maintain, in a blocked liquidity account, an amount equal to (i) $2.5 million, or (ii) $20.0 million upon the achievement by the Company of certain financial milestones; provided, that the amount required to be maintained in the blocked liquidity account will be $10.0 million if the Company makes an optional prepayment of at least $50.0 million in principal amount of the Term Loans on or prior to March 31, 2020.

In connection with Amendment No. 2, on December 6, 2019, the Company paid the Lenders fees of approximately $1.4 million, which the Company recorded as a debt discount, and issued to the Lenders warrants to purchase an aggregate of 2,000,000 shares of the Company's common stock (the "December 2019 Warrants"). The December 2019 Warrants have an exercise price per share of $3.26, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable from June 6, 2020 through June 6, 2030 and will be exercisable solely on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrants, in which case the December 2019 Warrants shall also be exercisable on a cashless exercise basis. The Company recorded a $6.0 million debt discount representing the fair value of the December 2019 Warrants with a corresponding increase to additional paid-in-capital. The debt discount is being recognized as interest expense over the life of the Term Loans using the effective interest method.

The fair value of the Term Loans was estimated using a discounted cash flow model with Level 3 inputs with key inputs that include debt yield, coupon rate and maturity dates. Borrowings under the Term Loans consisted of the following (in thousands):

	December 31,	
	2019	2018
Face value of loan	$ 120,000	$ 100,000
Unamortized debt issuance costs	(7,945)	(6,543)
Unamortized debt discount	(34,892)	(26,248)
Carrying value	$ 77,163	$ 67,209
Estimated fair value	$ 70,460	$ 64,019

Interest expense recognized for stated interest on the Term Loans totaled $10.7 million and $1.4 million for the years ended December 31, 2019 and 2018, respectively. Debt discount and debt issuance costs, which are presented as a direct reduction of the Loan Agreement in the consolidated balance sheets, are amortized as interest expense using the effective interest method. The amount of debt discount and debt issuance costs included in interest expense on the Term Loans for the years ended December 31, 2019 and 2018 was approximately $5.5 million and $0.5 million, respectively.

The Company identified a number of embedded derivatives that require bifurcation from the Initial Loan and separate accounting as a compound derivative. As the current fair value attributed to the bifurcated compound derivative is immaterial, the Company has not recorded this derivative within its consolidated financial statements. The Company re-evaluates this assessment each reporting period.

The Company identified certain embedded derivatives that require bifurcation from the Conditional Loan. Certain of these embedded features include a contingent accelerated repayment feature, which was accounted for in the consolidated financial statements as a derivative liability. (See Note 4). The Company re-evaluates this assessment each reporting period.

Subsequent to December 31, 2019 through February 28, 2020, the Company repaid approximately $37.0 million of outstanding principal under the Term Loans plus approximately $1.9 million of related prepayment premium, exit fees and accrued interest thereon. Approximately $11.8 million of such repayment was effectuated through a release by the Lenders of all amounts held in a debt service reserve account for the benefit of the Lenders and of all amounts in the blocked liquidity account. The Company is no longer required to maintain any amounts in the debt service reserve account or the blocked liquidity account, but has committed to meet minimum capital-raising and debt repayment requirements in the first quarter of 2020, and to pursue debt restructuring arrangements and the sale of one or more non-core assets in the first half of 2020. In addition, if certain conditions are not satisfied by April 30, 2020, the Company will be required to repay $20 million to the Lenders on May 1, 2020; however, the Company believes that the probability that such conditions will not be satisfied by April 30, 2020 is remote and therefore does not expect to have to make such repayment.

Both the 2018 Purchase Agreements and Indenture for Scilex and the 2018 Oaktree Term Loan Agreement, (collectively, the "Debt Arrangements"), provide that, upon the occurrence of an event of default, the Purchasers thereof may, by written notice to the Company, declare all of the outstanding principal and interest under such Debt Arrangements immediately due and payable. For purposes of the Debt Arrangements, an event of default includes, among other things, (i) a failure to pay any amounts when due under the Debt Arrangements, (ii) a breach or other failure to comply with the covenants (including financial, notice and reporting covenants) under the Debt Arrangements, (iii) a failure to make any payment on, or other event triggering an acceleration under, other material indebtedness of the Company, which would include, with respect to the 2018 Oaktree Term Loan Agreement, a failure or acceleration under the 2018 Purchase Agreements and Indenture for Scilex, and with respect to the 2018 Purchase Agreements and Indenture for Scilex, a failure or acceleration under the 2018 Oaktree Term Loan Agreement, and (iv) the occurrence of certain insolvency or bankruptcy events (both voluntary and involuntary) involving the Company or certain of its subsidiaries. The Company is in compliance with event of default clauses under the Debt Arrangements.

2018 Short-term Bridge Loan

In September 2018, the Company entered into a Short-term Bridge Loan Agreement ("2018 Bridge Loan") in which the Company received proceeds of approximately $19.6 million, net of approximately $0.3 million of commitment fees to facilitate the timing of a cash payment. The 2018 Bridge Loan was paid in full as of December 31, 2018.

2018 Chinese Yuan ("RMB") Loan

In March 2018, the Company entered into a term loan in the aggregate principal amount of $1.6 million (RMB 10.0 million) with the Bank of China and the Agricultural Bank of China. This bank facility was used for working capital purposes. The proceeds from the loan agreement are reflected as financing activities in the consolidated statements of cash flows for the twelve months ended December 31, 2018. In January 2019, the Company repaid part of the remaining principal amount of $0.7 million (RMB 5.0 million). The interest rate on this loan is 5%.

10. Shareholder's Equity

2019 Public Offering of Common Stock and Warrants

On June 28, 2019, the Company entered into an underwriting agreement (the "Underwriting Agreement") with JMP Securities LLC (the "Representative"), as representative of the several underwriters named therein (the "Underwriters"), relating to a firm commitment underwritten public offering (the "June 2019 Offering") of 8,333,334 shares of the Company's common stock ("Common Stock"), Series A warrants to purchase up to an aggregate of 8,333,334 shares of Common Stock (the "Series A Warrants"), Series B warrants to purchase up to an aggregate of 8,333,334 shares of Common Stock (the "Series B Warrants") and Series C warrants to purchase up to an aggregate of 8,333,334 shares of Common Stock (the "Series C Warrants" and, together with the Series A Warrants and the Series B Warrants, the "Offering Warrants"). The public offering price was $3.00 per share of Common Stock and accompanying Offering Warrants and the Underwriters purchased the Common Stock and accompanying Offering Warrants at a price of $2.82 per share and accompanying Offering Warrants. The Series A Warrants will be exercisable six months from the date of issuance, will expire on the 10-year anniversary of the date of issuance and will have an exercise price of $3.75 per share. The Series B warrants were immediately exercisable upon issuance, will expire on the date that is nine months from the date of issuance and will have an exercise price of $3.00 per share. The Series C Warrants will be exercisable six months from the date of issuance and only to the extent and in proportion to a holder of the Series C Warrants exercising its Series B Warrants, will expire on the 10-year anniversary of the date of issuance and will have an exercise price of $3.75 per share.

The net proceeds from the June 2019 Offering were approximately $23.3 million, after deducting underwriting discounts and commissions and other estimated offering expenses, and were received in July 2019. During the quarter ended December 31, 2019, Series B Warrants to purchase an aggregate of 2,028,000 shares of common stock were exercised.

2019 Registered Direct Offering

On October 9, 2019, the Company announced the closing of its previously announced registered direct offering of 10,869,566 shares of its common stock and warrants to purchase up to 10,869,566 shares of its common stock, at a combined purchase price of $2.30 per share and related warrant. The net proceeds from this offering were approximately $23.4 million, after deducting the placement agent's fees and other estimated offering expenses, and were received in October 2019. The Company used the net proceeds from the offering for the continued clinical development of its RTX and CD38 CAR-T programs and general research and development, working capital and general corporate purposes. The Warrants will be exercisable immediately from the date of issuance, will expire on the seven-year anniversary of the date of issuance and will have an exercise price of $2.40 per share. During the quarter ended December 31, 2019, warrants to purchase an aggregate amount of 1,100,000 shares of common stock issued pursuant to this offering were exercised.

Universal Shelf Registration

In November 2014, the Company filed a universal shelf registration statement on Form S-3 (the "2014 Shelf Registration Statement") with the SEC, which was declared effective by the SEC in December 2014. This 2014 Shelf Registration Statement provided the Company with the ability to offer up to $250 million of securities, including equity and other securities as described in the registration statement. Included in the 2014 shelf registration is a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $50.0 million of the Company's common stock that may be issued and sold under a sales agreement with MLV & Co. LLC (the "2014 ATM Facility"). During the twelve months ended December 31, 2017, the Company sold approximately $13.9 million in shares of common stock under the 2014 ATM Facility. In April 2017, the Company completed a public offering of $47.5 million of shares of common stock pursuant to the 2014 Shelf Registration Statement for net proceeds of approximately $43.1 million.

In November 2017, the Company filed a universal shelf registration statement on Form S-3 (the "2017 Shelf Registration Statement") with the SEC, which was declared effective by the SEC in December 2017. The 2014 Shelf Registration Statement expired on December 6, 2017 when the 2017 Shelf Registration was declared effective. This 2017 Shelf Registration Statement provides the Company with the ability to offer up to $350 million of securities, including equity and other securities as described in the registration statement. Included in the 2017 Shelf Registration Statement was a sales agreement prospectus

covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $100.0 million of the Company's common stock that may be issued and sold under a sales agreement with B. Riley FBR, Inc. (the "ATM Facility"). During the twelve months ended December 31, 2018, the Company sold approximately $83.6 million in shares of common stock under the ATM Facility. Subsequently, the ATM Facility was cancelled during the twelve months ended December 31, 2019.

11. Stock Incentive Plans

2019 Stock Incentive Plan

In September 2019, the Company's stockholders approved the Sorrento Therapeutics, Inc. 2019 Stock Incentive Plan (the "2019 Plan"). The 2019 Plan replaced and superseded the Company's Amended and Restated 2009 Stock Incentive Plan (the "2009 Plan") and no further awards will be granted under the 2009 Plan. The 2019 Plan provides for the grant of incentive stock options, non-incentive stock options, stock appreciation rights, restricted stock awards, unrestricted stock awards, restricted stock unit awards and performance awards to eligible recipients. Recipients of stock options shall be eligible to purchase shares of the Company's common stock at an exercise price equal to no less than the estimated fair market value of such stock on the date of grant. The maximum term of options granted under the Stock Plan is ten years. Employee option grants generally vest 25% on the first anniversary of the original vesting commencement date, with the balance vesting monthly over the remaining three years.

The following table summarizes stock option activity as of December 31, 2019 under the 2019 Plan, the 2009 Plan and the Company's Non-Employee Director Plan, and the changes for the period then ended (dollar values in thousands, other than weighted-average exercise price):

	Options Outstanding	Weighted-Average Exercise Price	Aggregate Intrinsic Value
Outstanding at December 31, 2018	10,523,075	$ 4.91	$ 1,723
Options Granted	5,520,600	3.40	
Options Canceled	(1,188,850)	1.85	
Options Exercised	(268,164)	5.42	
Outstanding at December 31, 2019	14,586,661	$ 4.36	$ 5,136

The aggregate intrinsic value of options exercised during the years ended December 31, 2019, 2018 and 2017 was $0.5 million, $0.1 million and zero, respectively. The Company uses the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of employee stock options was estimated at the grant date using the following assumptions:

	Years Ended December 31,		
	2019	2018	2017
Weighted-average grant date fair value	$ 3.40	$ 3.65	$ 1.28
Dividend yield	—	—	—
Volatility	96 %	81 %	81 %
Risk-free interest rate	2.02 %	2.87 %	1.92 %
Expected life of options	6.0 years	6.1 years	6.1 years

The assumed dividend yield was based on the Company's expectation of not paying dividends in the foreseeable future. The expected volatility is based on the historical volatility of the Company's stock. The risk-free interest rate is based on the U.S Treasury yield curve over the expected term of the option. The weighted average expected life of options was estimated using the average of the contractual term and the weighted average vesting term of the options.

Total stock-based compensation recorded as operating expenses was $8.3 million, $6.2 million and $4.7 million for the years ended December 31, 2019, 2018 and 2017, respectively. The total unrecognized compensation cost related to unvested employee and director stock option grants as of December 31, 2019 was $21.8 million and the weighted average period over which these grants are expected to vest is 1.6 years.

As of December 31, 2019, approximately 89.2 million shares of common stock were reserved for future issuance, comprised of 57.6 million shares for common stock warrants, 21.8 million shares under stock incentive plans and 9.8 million shares under the Semnur Share Exchange. As of December 31, 2019, approximately 7.1 million shares of common stock remained available for grant under the 2019 Plan.

Scilex Pharmaceuticals Inc. 2017 Equity Incentive Plan

In June 2017, the Company's subsidiary, Scilex Pharma, adopted the Scilex Pharmaceuticals Inc. 2017 Equity Incentive Plan (the "Scilex Pharma 2017 Plan"). The Scilex Pharma 2017 Plan reserved 24.0 million shares of Scilex Pharma common stock. Stock options granted under the Scilex Pharma 2017 Plan typically vest 1/4th of the shares on the first anniversary of the vesting commencement date and 1/48th of the remaining options vest each month thereafter. The Scilex Pharma 2017 Plan was amended and restated on July 5, 2018.

Upon the Merger Closing, the Scilex Pharma 2017 Equity Incentive Plan was terminated, and each option to purchase Scilex Pharma's common stock outstanding and unexercised immediately prior to the Merger Closing were cancelled and substituted for that number of options to acquire common stock of Scilex Holding. Total stock-based compensation recorded as operating expenses was $4.3 million, $0.3 million and $0.3 million for the years ended December 31, 2019, 2018 and 2017 respectively.

Scilex Holding Company 2019 Stock Option Plan

The board of directors of Scilex Holding adopted the Scilex Holding Company 2019 Stock Option Plan (the "2019 Stock Option Plan") on May 28, 2019. The 2019 Stock Option Plan was approved by the stockholders of Scilex Holding on June 7, 2019. 30.0 million shares of common stock of Scilex Holding were reserved for issuance pursuant to the 2019 Stock Option Plan.

As of December 31, 2019, options to purchase 24,511,073 shares of the common stock of Scilex Holding were outstanding, which is comprised of options to purchase 20,638,260 shares of common stock that were outstanding under the 2019 Stock Option Plan and options to purchase 3,872,813 shares of common stock that were outstanding pursuant to options previously granted under the Scilex Pharma 2017 Plan. As of December 31, 2019, 9,361,740 shares were reserved for awards available for future issuance under the 2019 Stock Option Plan.

The total unrecognized compensation cost related to unvested employee and director stock option grants as of December 31, 2019 was $15.3 million and the weighted average period over which these grants are expected to vest is 3.17 years.

12. Commitments and Contingencies

Litigation

In the normal course of business, the Company may be named as a defendant in one or more lawsuits. Other than as set forth below, the Company is not a party to any outstanding material litigation and management is currently not aware of any legal proceedings that, individually or in the aggregate, are deemed to be material to the Company's financial condition or results of operations.

On April 3, 2019, the Company filed two legal actions against, among others, Patrick Soon-Shiong and entities controlled by him, asserting claims for, among other things, fraud and breach of contract, arising out of Dr. Soon-Shiong's purchase of the drug Cynviloq™ from the Company in May 2015. The actions allege that Dr. Soon-Shiong and the other defendants, among other things, acquired the drug Cynviloq™ for the purpose of halting its progression to the market. Specifically, the Company has filed:

- An arbitration demand with the American Arbitration Association in Los Angeles, California against NantPharma, LLC and Chief Executive Officer Patrick Soon-Shiong, seeking damages in excess of $1.0 billion, as well as additional punitive damages, related to alleged fraud and breaches of the Stock Sale and Purchase Agreement, dated May 14, 2015, entered into between NantPharma, LLC and the Company, filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission (the "SEC") on August 7, 2015. On May 24, 2019, NantCell, Inc., Dr. Soon-Shiong and Immunotherapy NANTibody LLC ("NANTibody") General Counsel Charles Kim filed a motion in the Los Angeles Superior Court to stay or dismiss the Company's arbitration demand. On October 9, 2019, the Los Angeles Superior Court denied the motion to stay or dismiss the arbitration demand, and the arbitration is ongoing; and

- An action in the Los Angeles Superior Court derivatively on behalf of NANTibody against NantCell, Inc., NANTibody Board Member and NantCell, Inc. Chief Executive Officer Patrick Soon-Shiong, and NANTibody officer Charles Kim, related to several breaches of the June 11, 2015 Limited Liability Company Agreement for NANTibody entered into between the Company and NantCell, Inc. The suit also alleges breaches of fiduciary duties and seeks, inter alia, a declaration that the Assignment Agreement entered into on July 2, 2017, between NantPharma, LLC and NANTibody is void and an equitable unwinding of the Assignment Agreement. The suit calls for the restoration of $90.05 million to the NANTibody capital account, thereby restoring the Company's equity method investment in NANTibody to its invested amount as of June 30, 2017 of $40.0 million. On May 24, 2019, NantCell, Inc. and Dr. Soon-Shiong filed a cross-complaint against the Company and Dr. Ji, seeking unspecified damages, as well as additional punitive damages and specific performance, related to alleged fraud, alleged breaches of the Exclusive License Agreement for certain antibodies (dated April 21, 2015 and entered into between NantCell, Inc. and the Company), and tortious interference with contract. On May 24, 2019, NANTibody and NantPharma, LLC filed a new complaint in the action against the Company and Dr. Ji, seeking unspecified damages, as well as additional punitive damages and specific performance, related to alleged fraud, alleged breaches of the Stock Sale and Purchase Agreement, alleged breaches of the Exclusive License Agreement for certain antibodies (dated April 21, 2015 and entered into between NantCell, Inc. and the Company), and tortious interference with contract. On July 8, 2019, the Company and Dr. Ji filed motions to compel the cross-complaint and new action to arbitration. On October 9, 2019, the Los Angeles Superior Court granted the motions to compel to arbitration all of the claims brought by NANTibody, NantCell, Inc. and NantPharma, LLC, and denied the motions to compel as to the claims brought by Dr. Soon-Shiong. Subsequently, NANTibody, NantCell, Inc., and NantPharma, LLC have re-filed their claims in arbitration. The claims against Dr. Soon-Shiong have been stayed pending resolution of the claims filed in arbitration. The original derivative action is no longer stayed, and the parties are currently engaged in discovery in the suit.

Operating Leases

The Company leases administrative, research and development, sales and marketing and manufacturing facilities under various non-cancelable lease agreements. Facility leases generally provide for periodic rent increases, and many contain escalation clauses and renewal options. As of December 31, 2019, the Company's leases have remaining lease terms of approximately 0.4 to 9.9 years, some of which include options to extend the lease terms for up to five years, and some of which allow for early termination. In calculating the lease liability, lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise such options. Many of the Company's leases are subject to variable lease payments. Variable lease payments are recognized in the period in which the obligation for those payments are incurred, are not included in the measurement of the ROU assets or lease liabilities and are immaterial. Additionally, certain leases may be subject to annual changes in the consumer price index ("CPI"). Changes in the CPI are treated as variable lease payments and do not result in a remeasurement of the ROU assets or lease liabilities.

As the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. The Company calculates the associated lease liability and corresponding ROU asset upon lease commencement using a discount rate based on a credit-adjusted secured borrowing rate commensurate with the term of the lease. As of December 31, 2019, the Company has no finance leases.

Operating lease costs were approximately $10.0 million, $6.1 million and $3.2 million for the twelve months ended December 31, 2019, 2018 and 2017, respectively, and were primarily comprised of long-term operating lease costs. Short-term operating lease costs were immaterial. Supplemental quantitative information related to leases includes the following (in thousands):

	Year ended December 31, 2019	
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$	6,935
ROU assets obtained in exchange for new and amended operating lease liabilities	$	6,777
Weighted average remaining lease term in years - operating leases		9.4 years
Weighted average discount rate - operating leases		12.2 %

Maturities of lease liabilities are as follows (in thousands):

Years ending December 31,	Operating leases
2020	$ 9,807
2021	9,501
2022	9,545
2023	9,768
2024	9,885
Thereafter	47,027
Total lease payments	95,533
Less imputed interest	(40,100)
Total lease liabilities as of December 31, 2019	$ 55,433

13. Income Taxes

Total income before income taxes summarized by region for the years ended December 31, 2019, 2018 and 2017 is as follows (in thousands):

	2019	2018	2017
United States	$ (362,776)	$ (216,098)	$ (24,301)
Foreign	(709)	(2,702)	(628)
Total	$ (363,485)	$ (218,800)	$ (24,929)

The components of the provision expense (benefit) were as follows for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	2019	2018	2017
Current:			
Federal	$ (68)	$ (178)	$ (366)
State	27	23	14
Foreign	(37)	(44)	30
	(78)	(199)	(322)
Deferred:			
Federal	(642)	(3,499)	(33,178)
State	247	(2,421)	(2,538)
Foreign	—	(155)	—
	(395)	(6,075)	(35,716)
Totals	$ (473)	$ (6,274)	$ (36,038)

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

The components of the Company's net deferred tax liabilities and related valuation allowance are as follows as of December 31, 2019 and 2018 (in thousands):

	2019	2018
Deferred tax assets:		
Amortization of intangibles	$ 26,843	$ 27,075
Deferred revenue	26,064	25,448
Derivative liability	4,150	—
Tax credit carryforwards	17,575	13,720
Net operating loss carryforwards	91,376	43,542
Stock based compensation	3,593	1,786
Accrued expenses and other	25,958	14,037
Operating lease liabilities	12,935	—
Total deferred tax assets	208,494	125,608
Less valuation allowance	(148,140)	(74,970)
Total deferred tax assets	60,354	50,638
Deferred tax liabilities:		
Amortization of intangibles	(11,475)	(12,739)
Depreciation	(450)	(543)
Investment in common stock	(46,584)	(46,772)
Operating lease right-of-use assets	(10,888)	—
Total deferred tax liabilities	(69,397)	(60,054)
Net deferred tax assets / liabilities	$ (9,043)	$ (9,416)

The reconciliation between U.S. federal income taxes at the statutory rate and the Company's provision for income taxes are as follows for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	2019	2018	2017
Income tax expense (benefit) at federal statutory rate	$ (76,332)	$ (46,011)	$ (8,725)
State, net of federal tax benefit	(8,904)	(3,075)	(834)
Other permanent differences	(1,937)	2,814	1,290
Debt discount and interest limitation	7,013	11,357	—
Incentive stock compensation	1,568	1,001	1,025
Transaction costs	121	102	408
Other	(1,714)	123	715
Return to provision adjustment	19	(8)	(42)
Acquired in-process research and development	18,690	677	71
Change in Federal rate	—	—	10,006
Change in State rate	(94)	(453)	810
Research tax credits	(3,813)	(4,664)	(4,051)
Uncertain tax positions	795	879	1,027
Prior year true-ups and carrybacks	(187)	(889)	(1,095)
Stock compensation true-up	(804)	308	1,788
Change in valuation allowance	65,106	31,565	(38,431)
Income tax provision	$ (473)	$ (6,274)	$ (36,038)

The Company has evaluated the available evidence supporting the realization of its gross deferred tax assets, including the amount and timing of future taxable income, and has determined that it is more likely than not that the deferred tax assets will not be realized. Due to such uncertainties surrounding the realization of the domestic deferred tax assets, the Company maintains a valuation allowance of $148.1 million against its deferred tax assets as of December 31, 2019. Realization of the

deferred tax assets will be primarily dependent upon the Company's ability to generate sufficient taxable income prior to the expiration of its net operating losses.

As of December 31, 2019, the Company had net operating loss carryforwards of approximately $368.2 million and $167.7 million for federal and state income tax purposes, respectively. These may be used to offset future taxable income and will begin to expire in varying amounts in 2029 to 2039, except for $287.0 million of the federal net operating loss that have an indefinite carryforward period. The Company also has research and development and orphan drug credits of approximately $15.6 million and $7.9 million for federal and state income taxes purposes, respectively. The federal credits may be used to offset future tax and will begin to expire in varying amounts in 2029 to 2039. The state credits may be used to offset future tax, such credits carryforward indefinitely.

Internal Revenue Code Section 382 rules apply to limit a corporation's ability to utilize existing net operating loss and tax credit carryforwards once the corporation experiences an ownership change as defined in Section 382. The Company has undergone an ownership change in a prior year. For the year ended December 31, 2019, there was no impact of such limitations on the Company’s income tax provision.

The Company is subject to taxation in the U.S., various state tax jurisdictions and various foreign tax jurisdictions. The Company's tax years starting in December 31, 2007 through December 31, 2019 are open and subject to examination by the U.S. and state taxing authorities due to the carryforward of net operating losses and research and development credits.

During 2018 the Company was notified by the Franchise Tax Board that its California income tax return for the 2015 and 2016 calendar year was selected for examination. The Company continues to respond to information requested.

The Company adopted the provisions of ASC Topic 740 regarding uncertain tax positions on January 1, 2009. Under ASC Topic 740, the impact of an uncertain income tax position taken on a tax return must be recognized at the largest amount that is cumulatively “more likely than not” to be sustained upon audit by relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained.

A reconciliation of the beginning and ending amount of unrecognized tax expense (benefits) is as follows for the years ended December 31, 2019, 2018 and 2017 (in thousands):

	2019	2018	2017
Beginning balance	$ 4,352	$ 3,883	$ 2,389
Increase related to current year tax positions	734	916	1,436
Increase related to prior year tax positions	257	150	58
Decrease related to prior year tax positions	(7)	(597)	—
Ending balance	$ 5,336	$ 4,352	$ 3,883

The Company’s policy is to recognize interest and penalties related to income tax matters in income tax expense. No interest and penalties have been recognized as of and for the periods ended December 31, 2019, 2018 or 2017.

The Company believes that no material amount of the liabilities for uncertain tax positions will expire within 12 months of December 31, 2019.

14. Related Party Agreements and Other

As further discussed in Note 3, on March 18, 2019, the Company entered into a Merger Agreement with Semnur, Scilex Holding, Merger Sub and Fortis Advisors LLC, solely as representative of the Equityholders’ Representative. Pursuant to the Merger Agreement, Merger Sub merged with and into Semnur, with Semnur surviving as a wholly owned subsidiary of Scilex Holding. Jaisim Shah, a member of the Company’s Board of Directors, was Semnur’s Chief Executive Officer, a member of its Board of Directors and a stockholder of Semnur prior to the acquisition transaction. Following the issuance of the Stock Consideration as discussed in Note 3, the Company is the owner of approximately 58% of Scilex Holding’s issued and outstanding capital stock.

Semnur is party to an Assignment Agreement with Shah Investor LP, pursuant to which Shah Investor LP assigned certain intellectual property to Semnur and Semnur agreed to pay Shah Investor LP a contingent quarterly royalty in the low-single digits based on quarterly net sales of any pharmaceutical formulations for local delivery of steroids by injection

developed using such intellectual property, which would include SEMDEXA. Mahendra Shah, Ph.D., who has served on the board of directors of Scilex Holding since March 2019, is the managing partner of Shah Investor LP.

As of December 31, 2019, approximately 14.7% of the outstanding capital stock of Scilex Holding represents a noncontrolling interest and continues to be held by ITOCHU CHEMICAL FRONTIER Corporation. Scilex Pharma has entered into a product development agreement (the "Product Development Agreement") with ITOCHU CHEMICAL FRONTIER Corporation and another party (together, the "Developers"), which together serve as the sole manufacturer and supplier to Scilex Pharma for lidocaine tape products, including ZTlido and SP-103 (each, a "Product"). During the year ended December 31, 2019, Scilex Pharma purchased approximately $8.0 million of inventory from the Developers pursuant to the Product Development Agreement. Pursuant to the Product Development Agreement, Scilex Pharma is required to make aggregate royalty payments between 25% and 35% to the Developers based on net profits. Net profits are defined as net sales, less cost of goods and marketing expenses. Net sales are defined as total gross sales of any Product, less all applicable deductions, to the extent accrued, paid or allowed in the ordinary course of business with respect to the sale of such Product, and to the extent that they are in accordance with U.S. GAAP. If Scilex Pharma were to sublicense the licensed technologies, the Developers will receive the same proportion of any sub-licensing fees received therefrom. The Product Development Agreement will continue in full force and effect until October 2, 2028, the date that is ten years from the date of the first commercial sale of ZTlido. The Product Development Agreement will renew automatically for subsequent successive one-year renewal periods unless Scilex Pharma or the Developers terminate it upon 6-month written notice.

15. Segment Information

As of January 1, 2019, the Company realigned its businesses into two operating and reportable segments, Sorrento Therapeutics and Scilex. The Company reports segment information based on the management approach. The management approach designates the internal reporting used by the Chief Operating Decision Maker ("CODM"), which is the Company's Chief Executive Officer, for making decisions and assessing performance as the source of the Company's reportable segments. The CODM allocates resources and assesses the performance of each operating segment based on licensing, product sales and services revenue, operating expenses, and operating income (loss) before interest and taxes. The Company has determined its reportable segments to be Sorrento Therapeutics and Scilex based on the information used by the CODM.

Sorrento Therapeutics. The Sorrento Therapeutics segment is organized around the Company's Immuno-Oncology therapeutic area, leveraging its proprietary G-MAB™ antibody library and targeted delivery modalities to generate the next generation of cancer therapeutics. These modalities include proprietary chimeric antigen receptor T-cell therapy ("CAR-T"), dimeric antigen receptor T-cell therapy ("DAR-T"), antibody drug conjugates ("ADCs") as well as bispecific antibody approaches. Additionally, this segment also includes Sofusa®, a revolutionary drug delivery technology that delivers biologics directly into the lymphatic system to potentially achieve improved efficacy and fewer adverse effects than standard parenteral immunotherapy, and resiniferatoxin ("RTX"), which is a non-opioid-based neurotoxin and is currently in clinical trials for late stage cancer pain and osteoarthritis.

Scilex. The Scilex segment is largely organized around the Company's non-opioid pain management operations. Commencing September 30, 2019, revenues from the Scilex segment are exclusively derived from the sale of ZTlido.

- In October 2018, Scilex Pharma commercially launched its ZTlido product and began recognizing revenue in the fourth quarter of 2018.

- Semnur's SEMDEXA™ (SP-102) compound could become the first FDA-approved epidural steroid product for the treatment of sciatica. SEMDEXA™ has been awarded fast track status by the FDA. See Note 3 for further detail on the Semnur acquisition.

The Company manages its assets on a company basis, not by segments, as many of its assets are shared or commingled. With the exception of unrestricted cash balances, the Company's CODM does not regularly review asset information by reportable segment. The majority of long-lived assets for both segments are located in the United States.

The following table presents information about the Company's reportable segments for the twelve months ended December 31, 2019, 2018 and 2017 (in thousands):

(in thousands)	Twelve Months Ended December 31,								
	2019			2018			2017		
	Sorrento Therapeutics	Scilex	Total	Sorrento Therapeutics	Scilex	Total	Sorrento Therapeutics	Scilex	Total
External revenues	$ 10,399	$ 21,033	$ 31,432	$ 18,587	$ 2,606	$ 21,193	$ 151,856	$ —	$ 151,856
Operating expenses	130,529	160,296	290,825	137,166	34,452	171,618	114,879	11,642	126,521
Operating (loss) income	(120,130)	(139,263)	(259,393)	(118,579)	(31,846)	(150,425)	36,977	(11,642)	25,335
Unrestricted cash	12,176	10,345	22,521	86,024	72,714	158,738	20,119	310	20,429

16. Quarterly Financial Data (Unaudited)

The following table sets forth selected quarterly data for the years presented, in thousands, except per share data.

2019	Quarter Ended December 31,	Quarter Ended September 30,	Quarter Ended June 30,	Quarter Ended March 31,	Year Ended December 31,
Revenues	$ 13,034	$ 5,778	$ 6,477	$ 6,143	$ 31,432
Operating costs and expenses	$ 45,613	$ 59,061	$ 56,838	$ 129,313	$ 290,825
Net loss attributable to Sorrento	$ (62,820)	$ (64,415)	$ (56,762)	$ (108,071)	$ (292,068)
Net loss per share - basic	$ (0.41)	$ (0.49)	$ (0.46)	$ (0.88)	$ (2.20)
Net loss per share - diluted	$ (0.41)	$ (0.50)	$ (0.47)	$ (0.88)	$ (2.35)
Weighted-average shares - basic	154,964	130,800	122,549	122,281	132,732
Weighted-average shares - diluted	154,964	140,445	132,459	122,281	140,514

2018	Quarter Ended December 31,	Quarter Ended September 30,	Quarter Ended June 30,	Quarter Ended March 31,	Year Ended December 31,
Revenues	$ 6,929	$ 4,105	$ 3,913	$ 6,246	$ 21,193
Operating costs and expenses	$ 48,530	$ 52,012	$ 32,284	$ 38,792	$ 171,618
Net income (loss) attributable to Sorrento	$ (49,774)	$ (47,328)	$ (73,864)	$ (32,574)	$ (203,540)
Net income (loss) per share - basic	$ (0.41)	$ (0.40)	$ (0.73)	$ (0.38)	$ (1.92)
Net income (loss) per share - diluted	$ (0.41)	$ (0.40)	$ (0.73)	$ (0.38)	$ (1.92)
Weighted-average shares - basic	121,552	117,021	100,563	84,941	106,150
Weighted-average shares - diluted	121,552	117,021	100,563	84,941	106,150

17. Earnings Per Share

For the years ended December 31, 2019, 2018, and 2017, basic earnings per share of common stock is computed by dividing net income by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share of common stock is calculated to give effect to all dilutive securities, using the treasury stock method and the if-converted method for potentially dilutive shares of common stock issuable upon the Share Exchange, which is described in Note 3.

The following table sets forth the reconciliation of basic and diluted earnings per share for the years ended December 31, 2019, 2018 and 2017 (in thousands, except per share):

	Years Ended December 31,		
	2019	2018	2017
Numerator			
Net (loss) income attributable to Sorrento	$ (292,068)	$ (203,540)	$ 9,132
Net loss attributable to Semnur holders of Scilex Holding	(38,669)	—	—
Interest expense on note conversions, net of tax	—	—	(71)
Net (loss) income used for diluted earnings per share	(330,737)	(203,540)	9,061
Denominator for basic (loss) earnings per share	132,732	106,150	69,742
Potentially dilutive shares of Sorrento common stock issuable upon Share Exchange	7,782	—	—
Effect of dilutive stock options and convertible notes	—	—	639
Denominator for diluted (loss) earnings per share	140,514	106,150	70,381
Basic (loss) earnings per share	$ (2.20)	$ (1.92)	$ 0.13
Diluted (loss) earnings per share	$ (2.35)	$ (1.92)	$ 0.13

During 2019, 2018 and 2017, the Company had securities outstanding which could potentially dilute basic earnings per share in the future, but were excluded from the computation of diluted net loss per share, as their effect would have been anti-dilutive. These outstanding securities consist of the following (in thousands):

	Years Ended December 31,		
	2019	2018	2017
Outstanding options	14,587	10,523	6,321
Outstanding warrants	57,556	25,635	4,709

18. Subsequent Events

Suspension of Distribution Agreement

On February 10, 2020, the Company voluntarily suspended its continuous offering and sale of shares of its common stock pursuant to the Distribution Agreement. As of February 10, 2020, the Company had sold an aggregate of 2,120,149 shares of its common stock pursuant to the Distribution Agreement for aggregate net proceeds to the Company of approximately $7.4 million. A total of 2,090,802 shares for aggregate net proceeds to the Company of approximately $7.3 million were sold pursuant to the Distribution Agreement between January 1, 2020 to February 10, 2020.

Warrant Exercises

From January 1, 2020 through the date hereof, the following warrants to purchase shares of the Company's common stock were exercised: (i) Series B Warrants to purchase an aggregate of 3,440,000 shares of common stock, (ii) Series A Warrants to purchase an aggregate of 28,000 shares of common stock, (iii) Series C Warrants to purchase an aggregate of 23,000 shares of common stock, and (iv) warrants to purchase an aggregate of 1,517,609 shares of common stock that were issued in the Company's registered direct offering completed in October 2019. The aggregate net proceeds received by the Company for the exercise of all of the foregoing warrants was approximately $13.5 million.

Aspire Transaction

On February 10, 2020, the Company entered into a Common Stock Purchase Agreement (the "Aspire Purchase Agreement") with Aspire Capital Fund, LLC, an Illinois limited liability company ("Aspire Capital"), pursuant to which Aspire Capital is committed to purchase up to an aggregate of $75.0 million of shares of the Company's common stock over the 24-month term of the Aspire Purchase Agreement on the terms set forth therein (the "Offering"). Upon execution of the Aspire Purchase Agreement, the Company issued and sold to Aspire Capital under the Aspire Purchase Agreement 2,991,027 shares of

the Company's common stock at a price per share of $2.5075, for an aggregate purchase price of $7,500,000 (the "Initial Shares").

Pursuant to the terms of the Aspire Purchase Agreement, on any business day selected by the Company, the Company has the right, but not the obligation, to direct Aspire Capital, by delivering to Aspire Capital a notice (each, a "Purchase Notice"), to purchase on such date (each, a "Purchase Date") the number of shares of the Company's common stock set forth in the Purchase Notice, in an amount of up to 500,000 shares of the Company's common stock (subject to adjustment for recapitalizations, stock splits and similar matters), for up to $2,000,000 of the Company's common stock in the aggregate (unless otherwise mutually agreed by the Company and Aspire Capital), at a price per share (the "Purchase Price") equal to the lesser of (1) the lowest sale price of the Company's common stock on the Purchase Date, and (2) the arithmetic average of the three lowest closing sale prices for the Company's common stock during the ten consecutive business days ending on the business day immediately preceding the Purchase Date. The Company and Aspire Capital also may mutually agree to increase the number of shares that may be sold to as much as an additional 4,000,000 shares per business day. In addition, on any business day on which the Company delivers a Purchase Notice directing Aspire Capital to purchase at least 500,000 shares of the Company's common stock (subject to any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar transaction), the Company has the right, but not the obligation, to direct Aspire Capital, by delivering to Aspire Capital a volume-weighted average purchase notice (each, a "VWAP Purchase Notice"), to purchase on the next business day (each, a "VWAP Purchase Date") the number of shares of the Company's common stock that is equal to the percentage set forth in the VWAP Purchase Notice (which may not exceed 30%) of the trading volume of the Company's common stock on the Nasdaq Capital Market on such VWAP Purchase Date, subject to a maximum number of shares of the Company's common stock as determined by the Company in its sole discretion. The price per share (the "VWAP Purchase Price") for any shares of the Company's common stock purchased under a VWAP Purchase Notice will be equal to the lesser of: (a) the closing sale price of the Company's common stock on the VWAP Purchase Date, and (b) 97% of the volume-weighted average price of the Company's common stock on the Nasdaq Capital Market on the VWAP Purchase Date, subject to certain exceptions.

The Aspire Purchase Agreement provides that the Company and Aspire Capital will not effect any sales under the Aspire Purchase Agreement on any Purchase Date on which the closing sale price of the Company's common stock is less than $1.00.

Concurrently with the execution of the Aspire Purchase Agreement, and as consideration for Aspire Capital entering into the Aspire Purchase Agreement, the Company issued to Aspire Capital 897,308 shares of the Company's common stock as a commitment fee (the "Commitment Shares"). The Aspire Purchase Agreement may be terminated by the Company at any time, for any reason or no reason, without any liability to the Company. Generally, Aspire Capital may terminate the Aspire Purchase Agreement at any time that an event of default exists. Pursuant to the Aspire Purchase Agreement, Aspire Capital agreed that neither it nor any of its agents, representatives or affiliates will engage in any direct or indirect short-selling or hedging of the Company's common stock during the term of the Aspire Purchase Agreement. The Company expects to use any proceeds it receives under the Aspire Purchase Agreement for working capital and general corporate purposes.

From February 10, 2020 to February 28, 2020, the Company issued and sold an aggregate of 11,568,319 shares of the Company's common stock to Aspire Capital under the Aspire Purchase Agreement for aggregate net proceeds to the Company of $28.5 million.

DESCRIPTION OF SECURITIES OF SORRENTO THERAPEUTICS, INC.

The authorized capital stock of Sorrento Therapeutics, Inc., a Delaware corporation (the "***Company***"), consists of:

- 750,000,000 shares of common stock, $0.0001 par value per share ("***Common Stock***"); and
- 100,000,000 shares of preferred stock, $0.0001 par value per share ("***Preferred Stock***").

Common Stock

Except as otherwise expressly provided in the Company's Restated Certificate of Incorporation, as amended (the "***Certificate of Incorporation***") or as required by applicable law, all shares of Common Stock have the same rights and privileges and rank equally, share ratably and are identical in all respects as to all matters, including, without limitation, those described below:

- ***Voting rights.*** Each holder of Common Stock is entitled to one vote per share on each matter that requires stockholder approval. Holders of Common Stock do not have any cumulative voting rights. There is no provision for cumulative voting for the election of directors, which means that more than one-half of the shares voted can elect all of the directors then standing for election. The Company's Amended and Restated Bylaws (the "***Bylaws***") provide that all elections shall be determined by a plurality of votes cast, and except as otherwise required by law or the rules and regulations of any stock exchange applicable to the Company, all other matters shall be determined by a majority of votes cast affirmatively or negatively.
- ***Dividend rights.*** The holders of outstanding shares of Common Stock are entitled to receive ratably such dividends, if any, as may be declared by the Company's board of directors (the "***Board***") out of legally available funds. However, the current policy of the Board is to retain earnings, if any, for the operations and potential expansion of the business.
- ***Liquidation rights.*** Upon liquidation, dissolution or winding-up, the holders of Common Stock are entitled to share ratably in all of the Company's assets which are legally available for distribution, after payment of or provision for all liabilities.
- ***No preemptive or similar rights.*** The holders of Common Stock have no preemptive, subscription, redemption or conversion rights.
- ***Anti-Takeover Provisions.*** See the below section titled "Anti-Takeover Effects of Provisions of the Company's Certificate of Incorporation, Bylaws and the DGCL".

Listing

The Common Stock is listed on the Nasdaq Capital Market under the symbol "SRNE."

Preferred Stock

The Certificate of Incorporation provides that the Board may by resolution, without further vote or action by the stockholders, establish one or more classes or series of Preferred Stock having

the number of shares and relative voting rights, designation, dividend rates, liquidation, and other rights, preferences and limitations as may be fixed by them without further stockholder approval. Once designated by the Board, each series of Preferred Stock will have specific financial and other terms that will be set forth in the applicable certificate of designation for the series. Prior to the issuance of shares of each series of Preferred Stock, the Board is required by the General Corporation Law of the State of Delaware (the "***DGCL***") and the Certificate of Incorporation to adopt resolutions and file a certificate of designation with the Secretary of State of the State of Delaware. The certificate of designation fixes for each class or series the designations, powers, preferences, rights, qualifications, limitations and restrictions, including, but not limited to, some or all of the following:

- The distinctive designation of such series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by resolution of the Board;
- The rate and manner of payment of dividends payable on shares of such series, including the dividend rate, date of declaration and payment, whether dividends shall be cumulative and the conditions upon which and the date from which such dividends shall be cumulative;
- Whether shares of such series shall be redeemable, the time or times when, and the price or prices at which, shares of such series shall be redeemable, the redemption price, the terms and conditions of redemption and the sinking fund provisions, if any, for the purchase or redemption of such shares;
- The amount payable on shares of such series and the rights of holders of such shares in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;
- The rights, if any, of the holders of shares of such series to convert such shares into, or exchange such shares for, shares of Common Stock, other securities or shares of any other class or series of Preferred Stock and the terms and conditions of such conversion or exchange;
- The voting rights, if any, and whether full or limited, of the shares of such series, which may include no voting rights, one vote per share or such higher or lower number of votes per share as may be designated by the Board; and
- The preemptive or preferential rights, if any, of the holders of shares of such series to subscribe for, purchase, receive or otherwise acquire any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of any bonds, debentures, notes or any of the Company's other securities, whether or not convertible into shares of Common Stock.

All shares of Preferred Stock offered hereby will, when issued, be fully paid and nonassessable, including shares of Preferred Stock issued upon the exercise of preferred stock warrants or subscription rights, if any.

Although the Board has no intention at the present time of doing so, it could authorize the issuance of a series of Preferred Stock that could, depending on the terms of such series, impede the completion of a merger, tender offer or other takeover attempt.

Warrants

As of December 31, 2019, the Company had outstanding warrants to purchase an aggregate of 57,556,369 shares of Common Stock as follows:

- warrants to purchase an aggregate of 31,250 shares with an exercise price of $8.00 per share, all of which are currently exercisable and expire on September 27, 2020, all of which shall be automatically exercised on a “cashless” basis upon expiration if the fair market value of the Common Stock is greater than the exercise price of the warrants on the expiration date of the warrants;
- warrants to purchase an aggregate of 34,642 shares with an exercise price of $12.99 per share, all of which are currently exercisable and expire on March 31, 2021, all of which shall be automatically exercised on a “cashless” basis upon expiration if the fair market value of the Common Stock is greater than the exercise price of the warrants on the expiration date of the warrants;
- a warrant to purchase an aggregate of 306,748 shares with an exercise price of $4.89 per share, which is currently exercisable and expires on November 23, 2023, which shall be automatically exercised on a “cashless” basis upon expiration if the fair market value of the Common Stock is greater than the exercise price of the warrant on the expiration date of the warrant;
- warrants to purchase an aggregate of 12,121,210 shares with an exercise price of $2.61 per share, all of which are currently exercisable and expire on June 21, 2023;
- warrants to purchase an aggregate of 2,698,662 shares with an exercise price of $3.28 per share, all of which are currently exercisable (subject to certain beneficial ownership limitations) and expire on December 13, 2023;
- warrants to purchase an aggregate of 6,288,985 shares with an exercise price of $3.28 per share, all of which are currently exercisable and expire on May 7, 2029;
- warrants to purchase an aggregate of 1,333,304 shares with an exercise price of $3.94 per share, all of which are currently exercisable and expire on November 3, 2029;
- Series A warrants to purchase an aggregate of 8,333,334 shares with an exercise price of $3.75 per share, which became exercisable on January 2, 2020 (subject to certain beneficial ownership limitations) and expire on July 2, 2029, all of which shall be automatically exercised on a “cashless” basis upon expiration in accordance with the terms of the Series A warrants;
- Series B warrants to purchase an aggregate of 6,305,334 shares with an exercise price of $3.00 per share, all of which are currently exercisable (subject to certain beneficial ownership limitations) and expire on April 2, 2020;
- Series C warrants to purchase an aggregate of 8,333,334 shares with an exercise price of $3.75 per share, which became exercisable on January 2, 2020 (subject to certain beneficial ownership limitations) and expire on July 2, 2029, all of which are exercisable only to the extent and in proportion to a holder of Series C warrants exercising its

corresponding Series B warrants, all of which may be automatically exercised on a "cashless" basis upon expiration in accordance with the terms of the Series C warrants to the extent and in proportion to a holder of Series C warrants exercising its corresponding Series B warrants;
- warrants to purchase an aggregate of 9,769,566 shares with an exercise price of $2.40 per share, all of which are currently exercisable (subject to certain beneficial ownership limitations) and expire on October 9, 2026, all of which shall be automatically exercised on a "cashless" basis upon expiration in accordance with the terms of the warrants; and
- warrants to purchase an aggregate of 2,000,000 shares with an exercise price of $3.26 per share, all of which are exercisable on June 6, 2020 and expire on June 6, 2030.

All of the outstanding warrants contain provisions for the adjustment of the exercise price in the event of stock dividends, stock splits or similar transactions. In addition, certain of the warrants contain a "cashless exercise" feature that allows the holders thereof to exercise the warrants without a cash payment to the Company under certain circumstances. Certain of the warrants also contain provisions that provide certain rights to warrantholders in the event of a fundamental transaction, including a merger or consolidation with or into another entity, such as:

- the right to receive the same amount and kind of consideration paid to the holders of Common Stock in the fundamental transaction;
- the right to require the Company to repurchase the unexercised portion of certain warrants at the warrant's respective fair value using the Black Scholes option pricing formula; or
- the right to require the Company or a successor entity to redeem the unexercised portion of certain warrants for the same consideration paid to holders of Common Stock in the fundamental transaction at the warrant's respective fair value using the Black Scholes option pricing formula.

Anti-Takeover Effects of Certain Provisions of the Company's Certificate of Incorporation, Bylaws and General Corporation Law of the State of Delaware

Certain provisions of the Certificate of Incorporation, the Bylaws and the DGCL may have the effect of discouraging potential acquisition proposals or tender offers or delaying or preventing a change in control. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in the Company's best interests, including attempts by stockholders to replace or remove the Company's management.

These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of the Company to first negotiate with the Board. These provisions may delay or prevent someone from acquiring or merging with the Company, which may cause the market price of the Common Stock to decline.

Blank Check Preferred Stock

The Board is authorized to create and issue from time to time, without stockholder approval, up to an aggregate of 100,000,000 shares of Preferred Stock in one or more series and to establish the number of shares of any series of Preferred Stock and to fix the designations, powers, preferences and rights of the shares of each series and any qualifications, limitations or restrictions of the shares of each series.

The authority to designate Preferred Stock may be used to issue a series of Preferred Stock, or rights to acquire Preferred Stock, that could dilute the interest of, or impair the voting power of, holders of the Common Stock or could also be used as a method of determining, delaying or preventing a change of control.

Advance Notice Bylaws

The Bylaws contain an advance notice procedure for stockholder proposals to be brought before any meeting of stockholders, including proposed nominations of persons for election to the Board. Stockholders at any meeting will only be able to consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the Board or by a stockholder who was a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has given the Company's corporate secretary timely written notice, in proper form, of the stockholder's intention to bring that business before the meeting. Although the Bylaws do not give the Board the power to approve or disapprove of stockholder nominations of candidates or proposals regarding other business to be conducted at a special or annual meeting, the Bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the Company.

Choice of Forum

The Bylaws provide that, unless the Board consents to an alternative forum, the Court of Chancery in the State of Delaware will be the sole and exclusive forum for: (i) any derivative action or proceeding brought by or on behalf of the Company; (ii) any direct action asserting a claim against the Company or any of its directors or officers pursuant to any of the provisions of the DGCL, the Certificate of Incorporation or the Bylaws; (iii) any action asserting a claim of breach of fiduciary duties owed by any of its directors, officers or other employees to its stockholders; or (iv) any action asserting a violation of Delaware decisional law relating to its internal affairs. This provision does not apply to (a) actions in which the Court of Chancery in the State of Delaware concludes that an indispensable party is not subject to the jurisdiction of Delaware courts, or (b) actions in which a federal court has assumed exclusive jurisdiction to a proceeding. This choice of forum provision is not intended to apply to any actions brought under the Securities Act or the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. However, the Bylaws do not relieve the Company of its duties to comply with federal securities laws and the rules and regulations

thereunder, and its stockholders will not be deemed to have waived the Company's compliance with these laws, rules and regulations. The Bylaws also provide that any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company will be deemed to have notice of and consented to this choice of forum provision.

This choice of forum provision in the Bylaws may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with the Company or its directors, officers or other employees, which may discourage such lawsuits against the Company and its directors, officers and other employees. In addition, stockholders who do bring a claim in the Court of Chancery in the State of Delaware could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. Furthermore, the enforceability of similar choice of forum provisions in other companies' governing documents has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable.

Interested Stockholder Transactions

The Company is subject to Section 203 of the DGCL, which prohibits "business combinations" between a publicly-held Delaware corporation and an "interested stockholder," which is generally defined as a stockholder who is a beneficial owner of 15% or more of a Delaware corporation's voting stock for a three-year period following the date that such stockholder became an interested stockholder, unless: (i) the transaction is approved by the board of directors before the date the interested stockholder attained that status; (ii) upon consummation of the transaction which 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; or (iii) on or after the date of the transaction, the transaction is approved by the board of directors and authorized at a meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder. In general, the DGCL defines a business combination to include the following: (a) any merger or consolidation involving the corporation and the interested stockholder; (b) any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder; (c) subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (d) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (e) 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.

Filling Vacancies

The Certificate of Incorporation provides that the number of directors shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. As of December 31, 2019, the Board consists of nine directors.

In the event of a vacancy on the Board, however occurring, including a vacancy resulting from an increase in the size of the Board, unless otherwise required by law or by resolution of the Board, such vacancy shall be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for the remainder of the full term of the director for which the vacancy was created or occurred or until such director's successor shall have been duly elected and qualified. This system of electing and filling vacancies may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of the Company, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

The Certificate of Incorporation provides for the removal of any of the Company's directors only for cause and only by the affirmative vote of the holders of at least 67% of the voting power of all of the then outstanding shares of the Company's capital stock then entitled to vote at an election of directors, voting together as a single class. However, in December 2015, the Delaware Chancery Court issued a decision, *In Re VAALCO Energy, Inc.*, in which the court interpreted Section 141(k) of the DGCL and held that if a company does not have (i) a classified board of directors or (ii) cumulative voting in election of directors, then such company may not provide in its certificate of incorporation or bylaws that its directors may be removed only for cause. Prior to the *VAALCO* decision, it was not clear whether Section 141(k) prohibits this type of provision when the company does not have classified board or cumulative vote. The *VAALCO* decision made it clear that the removal provision in the Certificate of Incorporation is now invalid. As previously disclosed in a Current Report on Form 8-K filed by the Company on April 18, 2018, the Board resolved that, until such time as an amendment to the Certificate of Incorporation is approved by the Company's stockholders to permit stockholders to remove the Company's directors with or without cause by a majority of stockholders, the Company will not enforce the director removal provision of the Certificate of Incorporation to the extent it purports to limit removal of directors by stockholders only for cause or only by a supermajority of the voting power of all of the then-outstanding shares of capital stock of the Company.

No Stockholder Action by Written Consent; Special Meetings

The Certificate of Incorporation eliminates the right of stockholders to act by written consent without a meeting and the right to call a special meeting of stockholders or to require that the Board call a special meeting, except as may be required by statute.

Amendment of Charter Provisions

The amendment of any of the above provisions in the Certificate of Incorporation, except for the provision making it possible for the Company's board of directors to issue undesignated Preferred Stock, would require approval by a stockholder vote by the holders of at least 67% of the voting power of the then outstanding shares of capital stock entitled to vote generally in the election of directors.

The provisions of the DGCL and the Certificate of Incorporation could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of the Common Stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the Company's management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Exhibit 10.32

*****Certain identified information has been omitted from this exhibit because it is both (i) not material and (ii) would likely cause competitive harm to the Registrant if publicly disclosed. Such omitted information is indicated by brackets ("[...***...]") in this exhibit. *****

AMENDMENT NO. 2 TO TERM LOAN AGREEMENT

This AMENDMENT NO. 2 TO TERM LOAN AGREEMENT, dated as of December 6, 2019 (this "**Amendment**"), is among SORRENTO THERAPEUTICS, INC., a Delaware corporation (the "**Borrower**"), certain subsidiaries of the Borrower, as guarantors (each, a "**Guarantor**"), certain funds affiliated with Oaktree Capital Management, L.P. ("**Oaktree**" and such funds, the "**Lenders**") and Oaktree Fund Administration, LLC (the "**Agent**").

RECITALS

WHEREAS, the Borrower, certain subsidiaries of the Borrower, the Lenders and the Agent are parties to that certain Term Loan Agreement, dated as of November 7, 2018, as amended by Amendment No. 1, dated as of May 3, 2019 (as further modified and supplemented prior to the date hereof, the "**Term Loan Agreement**" and, after giving effect to the amendments set forth in Section 2 hereof, the "**Amended Term Loan Agreement**"); and

WHEREAS, the Borrower, the Agent and Lenders party hereto (which constitute the Required Lenders) have agreed to amend the Term Loan Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. Definitions. Except as otherwise defined in this Amendment, terms defined in the Term Loan Agreement are used herein as defined therein.

SECTION 2. Amendments. Each of the parties hereto agrees that, effective on the Effective Date (as defined below), (i) the Term Loan Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Term Loan Agreement attached as Exhibit A hereto (the "**Amended Term Loan Agreement**") and (ii) Exhibit I to the Term Loan Agreement shall be amended and restated in its entirety to read as set forth on Exhibit B hereto.

SECTION 3. Representations and Warranties. Each of the Loan Parties represents and warrants as follows:

(a) After giving effect to this Amendment and the Amendment No. 2 Fee Letter (as defined below), the representations and warranties contained in the Amended Term Loan Agreement and the other Loan Documents (each as amended hereby) are true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties are true and correct in all respects) on and as of the Effective Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such

representations and warranties were true and correct in all material respects on and as of such earlier date;

(b) After giving effect to this Amendment and the Amendment No. 2 Fee Letter, no event has occurred and is continuing that would constitute a Default or Event of Default under the Amended Term Loan Agreement or the other Loan Documents;

(c) Since December 31, 2018, no event, circumstance or change has occurred that has caused or would reasonably be expected to cause, in any case or in the aggregate, a Material Adverse Effect; and

(d) Each Loan Party has duly executed and delivered this Amendment and the other Loan Documents entered into in connection herewith, this Amendment and such other Loan Documents each constitutes the valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with the respective terms of this Amendment, subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally, and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and the execution, delivery and performance of this Amendment do not violate any provision of (i) any law or any governmental rule or regulation binding upon and applicable to such Loan Party, or (ii) any order, judgment or decree of any Governmental Authority binding on such Loan Party; except for any such violations which will not result in a Material Adverse Effect.

SECTION 4. Conditions of Effectiveness. This Amendment shall not become effective until the date (the "**Effective Date**") on which each of the following conditions is satisfied (or waived), in each case, as determined by the Required Lenders:

(a) Execution and Consents. The Agent shall have received counterparts of this Amendment executed by the Borrower, each Guarantor, the Lenders and the Agent.

(b) Fee Letter. The Agent shall have received counterparts of the fee letter agreement dated as of the Effective Date executed by the Borrower, the Agent and Oaktree (the "**Amendment No. 2 Fee Letter**") (it being understood that the Required Lenders hereby agree to be bound by Section 2 of the Amendment No. 2 Fee Letter).

(c) Board Rights Letter. The Agent shall have received counterparts of the letter agreement dated as of the Effective Date executed by the Borrower and Oaktree relating to board rights.

(d) Warrants Side Letter. The Agent shall have received counterparts of the letter agreement dated as of the Effective Date executed by the Borrower and Oaktree relating to the issuance of certain warrants to purchase common stock of the Borrower.

(e) Officer's Certificate. The Agent shall have received a certificate signed by an Authorized Officer of the Borrower certifying such matters as the Agent may request, dated as of the Effective Date and in form and substance reasonably satisfactory to the Agent.

(f) Fee. The Borrower shall have paid the Amendment Fee (as defined in the Amendment No. 2 Fee Letter).

(g) Representations and Warranties. The representations and warranties set out in Section 3 hereof shall each be true and correct as of the Effective Date.

(h) No Default. After giving effect to this Amendment and the Amendment No. 2 Fee Letter, no event shall have occurred or be continuing that would constitute a Default or Event of Default.

SECTION 5. Effect on the Term Loan Agreement and Loan Documents.

(a) On and as of the Effective Date, on and after the date hereof each reference in the Term Loan Agreement to "this Term Loan Agreement," "this Agreement," "hereunder," "hereof," "herein" or words of like import, and each reference in the Loan Documents to the Term Loan Agreement, shall mean and be a reference to the Amended Term Loan Agreement.

(b) Except as specifically amended above, the Term Loan Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed. Without limiting the generality of the foregoing, the Collateral Documents and all of the "Collateral" described therein do and shall continue to secure the payment of all of the "Obligations" described therein.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Agent or any of the Lenders under the Term Loan Agreement or any of the Loan Documents (each as amended hereby), nor constitute a waiver of any provision thereof. Nothing contained herein is intended, or shall be deemed or construed to constitute a waiver of any past or future Defaults or Events of Default or compliance with any term or provision of the Loan Documents or applicable law, except to the extent expressly provided for herein or in the Loan Documents executed in connection herewith.

(d) The entering into of this Amendment by the Agent and the Lenders and any consent to this Amendment by any Lender shall not be deemed to limit or hinder any rights of any such party under the Term Loan Agreement or any Loan Document (each as amended hereby), nor shall it be deemed to create or infer a custom or course of dealing between any such party, on the one hand, and the Borrower or any Guarantors, on the other hand, with regard to any provision thereof. Nothing contained in this Agreement shall be deemed to obligate the Agent or any Lender to enter into any forbearance agreement or to waive any Defaults or Events of Default, except to the extent expressly provided for herein or in the Loan Documents executed in connection herewith.

SECTION 6. Costs and Expenses. The Borrower agrees to pay on demand all costs and expenses of the Agent and the Lenders in connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder, including, without limitation, the fees and out-of-pocket expenses of Sullivan & Cromwell LLP, as outside counsel to Oaktree Capital Management, L.P., with respect thereto.

SECTION 7. Execution in Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 8. Governing Law. This Amendment and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Amendment or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 9. Jurisdiction. Each Loan Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Agent, any Lender or any Related Party of the foregoing in any way relating to this Amendment or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Amendment or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Amendment or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction.

SECTION 10. Waiver of Venue. Each Loan Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Amendment or any other Loan Document in any court referred to in Section 9 above. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 11. Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in *Section 10.1* of the Amended Term Loan Agreement.

SECTION 12. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.

SECTION 13. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 14. Reaffirmation. Each Loan Party (a) consents to the amendments of the Term Loan Agreement as set forth herein; (b) acknowledges, ratifies and reaffirms its obligations and other Indebtedness owing to the Secured Parties under any Loan Document to which it is a party, including the Guaranty of the Term Loans by each Guarantor; (c) agrees that each of the provisions of the Loan Documents to which it is a party (as amended by this Amendment), and each right and remedy of the Secured Parties thereunder, is and shall remain in full force and effect; and (d) reaffirms, acknowledges, agrees and confirms that it has granted to the Agent a validly created, enforceable and, to the extent required by the Loan Documents, perfected security interest in the Collateral in which it has an interest in order to secure all of its present and future Indebtedness evidenced by the Loan Documents to which it is a party, and acknowledges and agrees that such security interest, and all Collateral heretofore pledged as security for the Obligations and for such Indebtedness, continue to be and remain in full force and effect on and after the date hereof. Without limiting the generality of the foregoing, each of the undersigned hereby ratifies and reaffirms each and every provision set forth in the Amended Term Loan Agreement and the other Loan Documents to which it is a party effective as of the date hereof. Subject to the terms of the Amended Term Loan Agreement and other Loan Documents, all Indebtedness of any of the undersigned that is evidenced by any of the Loan Documents are unconditionally owing by such Person to the Secured Parties, without offset, defense, withholding, counterclaim or deduction of any kind, nature or description whatsoever, except to the extent provided to the contrary in the Loan Documents.

SECTION 15. Release. In consideration of this Amendment and agreements of the Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Loan Party (collectively, the "**Releasing Parties**"), each on behalf of itself and its successors, assigns, and other legal representatives hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges the Agent, the Lenders and their respective present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (the Agent, each Lender, and all such other Persons being hereinafter referred to collectively as

the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which any Loan Party or any of their respective successors, assigns or other legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, for or on account of, or in relation to, or in any way in connection with the Term Loan Agreement or any of the other Loan Documents or transactions thereunder on or prior to the day and date of this Amendment (any of the foregoing, a "**Claim**" and collectively, the "**Claims**"). **Each of the Releasees expressly acknowledges and agrees, with respect to the Claims, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law, or any principle of U.S. common law, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 15.** Furthermore, each of the Releasing Parties hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released and/or discharged by the Releasing Parties pursuant to this Section 15. The foregoing release, covenant and waivers of this Section 15 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment or prepayment of any of the Loans, or the termination of the Term Loan Agreement, this Amendment, any other Loan Document or any provision hereof or thereof. Each Loan Party understands, acknowledges and agrees that its release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. Each Loan Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

SECTION 16. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Signature Pages Follow

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

SORRENTO THERAPEUTICS, INC.,
as Borrower

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D.
Title: President, Chief Executive Officer and Chairman of the Board

SCILEX HOLDING COMPANY,
as Guarantor

By: /s/ Jaisim Shah
Name: Jaisim Shah
Title: Chief Executive Officer

SEMNUR PHARMACEUTICALS, INC.,
as Guarantor

By: /s/ Jaisim Shah
Name: Jaisim Shah Title: Chief Executive Officer

ARK ANIMAL HEALTH, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

BIOSERV CORPORATION,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: President

COENTRE TECHNOLOGIES LLC,

as Guarantor
By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

CONCORTIS BIOSYSTEMS, CORP.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

LA CELL, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

SCINTILLA PHARMACEUTICALS, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

SNAN HOLDCO LLC,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Manager

SORRENTO BIOLOGICS, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

TNK THERAPEUTICS, INC.,

as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

BDL PRODUCTS, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: President

CARGENIX HOLDINGS LLC,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

CONCORTIS, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: President

LEVENA BIOPHARMA US, INC.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: Chief Executive Officer

SINIWEST HOLDING CORP.,
as Guarantor

By: /s/ Henry Ji, Ph.D.
Name: Henry Ji, Ph.D. Title: President

OAKTREE FUND ADMINISTRATION, LLC, as Agent

By: Oaktree Capital Management, L.P. Its: Managing Member

By: /s/ Brian Price Name: Brian Price Title: Vice President

By: /s/ Peter E. Boos Name: Peter Boos Title: Assistant Vice President

SC INVESTMENTS E HOLDINGS, LLC,
as a Lender

By: Oaktree Fund GP IIA, LLC Its: Manager

By: Oaktree Fund GP II, L.P. Its: Managing Member

By: /s/ Brian Price Name: Brian Price Title: Authorized Signatory

By: /s/ Peter E. Boos Name: Peter Boos Title: Authorized Signatory

SC INVESTMENTS NE HOLDINGS, LLC, as a Lender

By: Oaktree Fund GP IIA, LLC Its: Manager

By: Oaktree Fund GP II, L.P. Its: Managing Member

By: /s/ Brian Price Name: Brian Price Title: Authorized Signatory

By: /s/ Peter E. Boos Name: Peter Boos Title: Authorized Signatory

OAKTREE STRATEGIC INCOME II, INC.,
as a Lender

By: Oaktree Capital Management, L.P. Its: Investment Advisor

By: /s/ Brian Price Name: Brian Price Title: Vice President

By: /s/ Peter E. Boos Name: Peter Boos Title: Assistant Vice President

OSCL SRNE, LLC, as a Lender

By: Oaktree Specialty Lending Corporation Its: Managing Member

By: Oaktree Capital Management, L.P. Its: Investment Advisor

By: /s/ Brian Price Name: Brian Price Title: Vice President

By: /s/ Peter E. Boos Name: Peter Boos Title: Assistant Vice President

Exhibit A

Amendments to Term Loan Agreement

TERM LOAN AGREEMENT

dated as of November 7, 2018
as amended by Amendment No. 1, dated as of May 3, 2019,

and Amendment No. 2, dated as of December 6, 2019

among

SORRENTO THERAPEUTICS, INC.,
as Borrower,
CERTAIN SUBSIDIARIES OF SORRENTO THERAPEUTICS, INC.,
as Guarantors,

SC INVESTMENTS NE HOLDINGS, LLC,

SC INVESTMENTS E HOLDINGS, LLC,
OAKTREE STRATEGIC INCOME II, INC., and
OCSL SRNE, LLC,
as Lenders,

and

OAKTREE FUND ADMINISTRATION, LLC,
as Agent

$~~150,000,000~~120,000,000 Senior Secured First Lien Term Loan

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TERM LOAN AGREEMENT

This **TERM LOAN AGREEMENT**, dated as of November 7, 2018, as amended by Amendment No. 1, dated as of May 3, ~~2019~~2019, and Amendment No. 2, dated as of December 6, 2019, is entered into among **SORRENTO THERAPEUTICS, INC.**, a Delaware corporation (the "**Borrower**"), the subsidiaries of the Borrower party hereto as Guarantors, the Lenders, and **OAKTREE FUND ADMINISTRATION, LLC**, in its capacity as administrative agent and collateral agent for the Lenders (together with its permitted successors in such capacity, the "**Agent**").

PRELIMINARY STATEMENTS

WHEREAS, the Borrower has requested that the Lenders extend a senior secured first lien term loan facility to the Borrower consisting of (i) term loans in the aggregate principal amount of One Hundred Million Dollars ($100,000,000) to be extended on the Closing Date and (ii) delayed draw term loans in the aggregate principal amount of ~~Fifty~~Twenty Million Dollars ($~~50,000,000~~20,000,000) to be extended in accordance with the terms hereof;

WHEREAS, the proceeds of the Term Loans shall be used by the Borrower for, among other things, working capital and general corporate purposes;

WHEREAS, each Guarantor will derive substantial direct and indirect benefits from the transactions contemplated by this Agreement;

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Agent, for the benefit of the Agent and the Lenders, a security interest in and lien upon the Collateral of the Borrower;

WHEREAS, each Guarantor has agreed to guarantee all of the Obligations and to secure its Obligations by granting to the Agent, for the benefit of the Secured Parties, a security interest in and lien upon the Collateral of such Guarantor; and

WHEREAS, the Lenders are willing to make such Term Loans to the Borrower upon the terms and conditions set forth in this Agreement;

NOW, **THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used in this Agreement, including in the preamble, recitals, exhibits, appendices and schedules hereto, shall have the following meanings:

"**Additional Guarantor**" means any Domestic Subsidiary of the Borrower that becomes a party to this Agreement and the Guaranty pursuant to *Section 5.8.*

"**Additional Reserve Amount**" has the meaning assigned to such term in *Section 5.13(c).*

"**Administrative Questionnaire**" means an administrative questionnaire in a form supplied by the Agent.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental audit, investigation or arbitration (whether or not purportedly on behalf of any Loan Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority (including any Environmental Claims) or by any Regulatory Authority with respect to any Regulatory Approval, whether pending or, to the knowledge of any Loan Party or any of its Subsidiaries, threatened in writing against or affecting: (i) the Loan Parties or any of its Subsidiaries, any property of the Loan Parties or any of its Subsidiaries, or (ii) this Agreement or the transactions contemplated hereby.

"**Affected Lender**" has the meaning assigned to such term in *Section 2.15(b)*.

"**Affected Loans**" has the meaning assigned to such term in *Section 2.15(b)*.

"**Affiliate**" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"**Agent**" has the meaning assigned to such term in the preamble to this Agreement.

"**Agent's Account**" means the account from time to time identified as such by the Agent in a written notice to the Borrower or any Lender, as applicable.

"Aggregate Asset Sale Consideration" means, with respect to any Asset Sale, an amount equal to, without duplication (i) the fair market value of the aggregate consideration received by the Borrower or any of its Subsidiaries, whether consisting of cash or other assets, in such Asset Sale *minus* (ii) the sum of (A) any taxes payable as a result of any gain recognized directly as a result of such Asset Sale, (B) any direct out-of-pocket selling costs, fees and expenses incurred as a result of such Asset Sale that are paid to unaffiliated third parties and (C) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than Obligations under the Loan Documents) that is secured by a Lien (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) on the asset subject to such Asset Sale that is required to be repaid (and is timely repaid) in connection with such Asset Sale.

"**Agreement**" means this Term Loan Agreement.

"**Allocable Amount**" has the meaning assigned to such term in *Section 9.9(b)*.

"**Alternate Base Rate**" means, for any date, a rate per annum equal to the greater of (i) the Prime Rate; (ii) the Federal Funds Effective Rate in effect on such day *plus* 0.50% or

(iii) the LIBOR Rate that would be applicable on such day (or if such day is not a Business Day, the immediately preceding Business Day) for a one-month Interest Period *plus* 1.0%; *provided* that, notwithstanding the foregoing, in no event shall the Alternate Base Rate be less than 1.00% per annum. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"**Amendment No. 1**" means that certain Amendment No. 1 to Term Loan Agreement, dated as of May 3, 2019, among the Borrower, the Guarantors party thereto, the Lenders and the Agent.

"**Amendment No. 1 Effective Date**" means the "Effective Date" as defined in Amendment No. 1.

"**Amendment No. 1 Side Letter**" means the Side Letter re: Amendment No. 1 to Term Loan Agreement, dated as of May 3, 2019, among the Borrower and Oaktree.

"**Amendment No. 2**" means that certain Amendment No. 2 to Term Loan Agreement, dated as of December 6, 2019, among the Borrower, the Guarantors party thereto, the Lenders and the Agent.

"**Amendment No. 2 Effective Date**" means the "Effective Date" as defined in Amendment No. 2.

"**Anti-Terrorism Laws**" means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the USA PATRIOT Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, United Kingdom, European Union or any other jurisdictions in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

"**Applicable Asset Sale Prepayment Amount**" means, with respect to any Asset Sale, (i) to the extent the Aggregate Asset Sale Consideration is attributable to Non-Core Assets, the lesser of (x) 100% of the Net Cash Proceeds received by the Borrower or its Subsidiaries in such Asset Sale and (y) 50% of the Aggregate Asset Sale Consideration and (ii) to the extent the Aggregate Asset Sale Consideration is attributable to the Specified Assets, 100% of the Net Cash Proceeds received by the Borrower or its Subsidiaries in such Asset Sale.

"**Applicable Margin**" means (i) in the case of Loans bearing interest based on the LIBOR Rate, 7.00% per annum or (ii) in the case of Loans bearing interest based on the Alternate Base Rate, 6.00%.

" **Approved Assignee**" means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an entity or an Affiliate of an entity that administers or manages a Lender, (iv) a commercial bank, insurance company or other financial institution that is an "accredited investor" (as defined in Regulation D of the Securities Act of 1933) that is principally in the business of managing debt investments, or (v) any Fund administered or managed by any of the foregoing, , in each case, other than any Disqualified Person.

"**Arm's-Length Transaction**" means, with respect to any transaction, the terms of such transaction shall not be less favorable to the Borrower or any of its Subsidiaries than commercially reasonable terms that would be obtained in a transaction with a Person that is an unrelated third party.

"**Asset Sale**" means a sale, lease or sublease (as lessor or sub-lessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of the Borrower's or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests of any of the Borrower's Subsidiaries, other than (i) inventory sold in the Ordinary Course, (ii) equipment and other tangible property no longer used or useful to any Loan Party's business disposed of in the Ordinary Course in an Arm's-Length Transaction, (iii) substantially worn, damaged or obsolete property (other than Intellectual Property) disposed of in the Ordinary Course, (iv) returns of inventory in the Ordinary Course, (v) the use of cash and Cash Equivalents in a manner not inconsistent with the provisions of this Agreement and the other Loan Documents, (vi) leases or subleases of real property in the Ordinary Course (but not sale-leasebacks), (vii) any Involuntary Disposition, (viii) the abandonment of any Intellectual Property (other than any Material Loan Party Intellectual Property) of the Borrower or any of its Subsidiaries in the Ordinary Course, (ix) the sale of any Equity Interests issued by the Borrower, and (x) any other sale, transfer or other disposition or a series of related sales, transfers or other dispositions of assets (other than Specified Assets) having a fair market value not in excess of $5,000,000 in the aggregate.

"**Assignment and Assumption Agreement**" means an assignment and assumption agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by *Section 10.4(b)(iii))*, and accepted by the Agent, in substantially the form of *Exhibit B*, or any other form approved by the Agent.

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board, chief executive officer, president, vice president, chief financial officer, principal financial officer, principal accounting officer or treasurer of such Person or other individual with express authority to act on behalf of such Person as designated (i) by the board of directors or other managing authority of such Person and (ii) in writing to the Agent.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of "Certification Regarding Beneficial Owners of Legal Entity Customers" published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Blocked Liquidity Account**" has the meaning assigned to such term in *Section 5.13(c).*

"**Board Rights Letter**" means that certain letter agreement, dated as of December 6, 2019, between the Borrower and Oaktree relating to Board rights.

"**Borrower**" has the meaning assigned to such term in the preamble to this Agreement.

"**Business Day**" means (i) with respect to all matters except those addressed in clause (ii), any day, excluding Saturday, Sunday and any day which is a legal holiday in the City of New York or San Diego, California or is a day on which banking institutions located in the City of New York or San Diego, California are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with a LIBOR Rate or Loans bearing interest at a LIBOR Rate, means any such day that is a Business Day described in clause (i) and that is also a day on which banks in the City of London are generally open for interbank or foreign exchange.

"**Capitalized Lease Obligation**" means, as applied to any Person, any obligation incurred or arising out of or in connection with any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Cash Equivalents**" means, as at any date of determination: (i) Canadian dollars, Hong Kong dollars, pounds sterling or euros, (ii) certificates of deposit, bankers' acceptances, time deposits, Eurodollar time deposits and money market deposit accounts issued, guaranteed by, placed with or issued or offered by a commercial bank having capital and surplus in excess of $1 billion and whose long-term debt is rated at least "A" or the equivalent thereof by Moody's or S&P and maturing within three months after the relevant date of calculation; (iii) (A) any

investment in marketable debt obligations issued or guaranteed by the government of the United States of America, Canada or the United Kingdom or by an instrumentality or agency thereof, in each case maturing within three months after the relevant date of calculation and not convertible or exchangeable to any other security, and (B) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another nationally recognized statistical rating organization), in each case with maturities not exceeding two years from the date of acquisition; (iv) commercial paper not convertible or exchangeable to any other security (A) for which a recognized trading market exists, (B) issued by an issuer incorporated or formed in the United States of America, Canada or the United Kingdom; (C) which matures within three months after the relevant date of calculation; and (D) which has a credit rating of either A-1 or higher by S&P or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating; (v) any investment in money market funds which (A) have a credit rating of either A-1 or higher by S&P or P-1 or higher by Moody's, (B) which invest at least 95% of their assets in securities of the types described in paragraphs (i) to (iv) above and (C) can be turned into cash on not more than thirty (30) days' notice; or (v) any other debt security approved by the Required Lenders.

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" means, at any time, the occurrence of any of the following events or circumstances: (i) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) shall (x) become the "beneficial owner" (within the meaning of Section 13(d) of the Exchange Act), directly or indirectly, of securities of the Borrower representing 35% or more of the total voting power represented by the Borrower's then outstanding voting securities, or (y) otherwise acquire, directly or indirectly, the power to direct or cause the direction of the management or policies of the Borrower, whether through the ability to exercise voting power, by contract or otherwise, (ii) persons who were (x) directors of the Borrower on the Closing Date or (y) appointed by directors who were directors of the Borrower

on the Closing Date or were nominated or approved by directors who were directors of the Borrower on the Closing Date shall cease to occupy a majority of the seats (excluding vacant seats) on the board of directors of the Borrower, (iii) the consummation of a merger or consolidation of the Borrower with or into any other Person, other than a merger or consolidation which would result in the voting securities of the Borrower outstanding immediately prior thereto continuing to represent at least 50% of the total voting power represented by the voting securities of the Borrower or such surviving entity or its parent outstanding immediately after such merger or consolidation or (iv) any direct or indirect sale, transfer or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole (it being agreed that the sale, transfer or other disposition by any Person of the Equity Interests of any Subsidiary constitutes an indirect sale, transfer or disposition of the assets of such Subsidiary).

"**Charges**" has the meaning assigned to such term in *Section 10.11*.

"**Closing Date**" means the date on which all conditions precedent set forth in *Section 3.1* are satisfied or waived in accordance with the terms of this Agreement and the Loans have been funded.

"**Closing Date Certificate**" means the Closing Date Certificate substantially in the form of *Exhibit C*.

"**Closing Date Term Loan Commitment**" means, with respect to any Lender, such Lender's commitment to make or otherwise fund a Loan on the Closing Date , and "**Closing Date Term Loan Commitments**" means all such commitments of all Lenders in the aggregate. The amount of each Lender's Closing Date Term Loan Commitment, if any, is set forth on Appendix B or in the applicable Assignment and Assumption Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Closing Date Term Loan Commitments as of the Closing Date, prior to giving effect to the funding of the Loans on the Closing Date, is $100,000,000.

"**Closing Date Term Loans**" has the meaning assigned to such term in *Section 2.1(a)*.

"**Code**" means the U.S. Internal Revenue Code of 1986.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Agent as security for the Obligations pursuant to any Collateral Document on or after the Closing Date.

"**Collateral Agreement**" means the Collateral Agreement, dated as of the date hereof, among the Borrower, each Guarantor and the Agent.

"**Collateral Documents**" means the Collateral Agreement, and all other instruments, documents and agreements, including any notices or other documents to be

delivered thereunder, delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant and/or confirm to the Agent, for the benefit of the Secured Parties, a Lien on any Collateral of that Loan Party as security for the Obligations.

"**Commitment**" means, with respect to any Lender, such Lender's Closing Date Term Loan Commitment~~, such Lender's Delayed Draw Term Loan Commitment~~ and such Lender's Early Delayed Draw Term Loan Commitment, and "**Commitments**" means all such commitments of all Lenders in the aggregate.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of *Exhibit D*.

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits taxes.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its assets or properties is subject.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"**Convertible Notes**" has the meaning assigned to such term in *Section 6.1(g)*.

"**Copyright**" means all copyrights arising under the laws of the United States of America or any other jurisdiction or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof and all applications and renewals in connection therewith, including all registrations, recordings, applications and renewals in the United States Copyright Office or in any foreign counterparts thereof.

"**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Debtor Relief Law.

"**Debtor Relief Law**" means Title 11, United States Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"**Debt Service Reserve Account**" has the meaning assigned to such term in *Section 5.13(a)*.

"**Debt Service Reserve Amount**" has the meaning assigned to such term in *Section 5.13(a)*.

"**Default**" means a condition or event that, after notice or expiry of an applicable grace period set forth in *Article VII*, or the making of any determination under the Loan Documents, or any combination of any of the foregoing, would constitute an Event of Default.

"**Delayed Draw Eligibility Event**" means the first date ~~during the Delayed Draw Eligibility Period~~on or prior to May 3, 2020 on which all of the following conditions have been satisfied (or waived by the Required Lenders in their discretion):

(i) the market capitalization of the Borrower has exceeded $1 billion for at least five (5) of the ten (10) consecutive Business Days immediately preceding such date;

(ii) no Default or Event of Default has occurred and is continuing; and

(iii) the Borrower shall have entered into a licensing agreement with a non-affiliated pharmaceutical company with a market capitalization of at least […***…] that is […***…], pursuant to which (x) the Borrower shall have licensed one or more Products to such pharmaceutical company and (y) the Borrower shall have received from such company aggregate non-refundable upfront consideration with a fair market value of $[…***…] or greater […***…], such agreement shall be in full force and effect, no party thereto shall be in material default thereunder and the terms of such agreement are otherwise reasonably acceptable to the Required Lenders.

~~"**Delayed Draw Eligibility Period**" means the period from and including August 7, 2019 to and including November 7, 2019.~~

~~"**Delayed Draw Funding Date**" means the date that is 30 days after the Agent's receipt of the Delayed Draw Notice following the Delayed Draw Eligibility Event (or if such date is not a Business Day, the immediately succeeding Business Day).~~

~~"**Delayed Draw Notice**" has the meaning assigned to such term in *Section 2.1(e)*.~~

~~"**Delayed Draw Term Loans**" has the meaning assigned to such term in *Section 2.1(d)*.~~

"**Delayed Draw Term Loan Commitment**" means, with respect to any Lender, such Lender's commitment to make or otherwise fund Delayed Draw Term Loans, and "**Delayed Draw Term Loan Commitments**" means all such commitments of all Lenders in the aggregate. The amount of each Lender's Delayed Draw Term Loan Commitment, if any, is set forth on Appendix B or in the applicable Assignment and Assumption Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The ~~aggregate amount of the~~ Delayed Draw Term Loan Commitments ~~as of the Amendment No. 1 Effective Date, prior to giving effect to the funding of the Delayed Draw Term Loans and after giving effect to the~~

~~funding of the Early Delayed Draw Term Loans, is $30,000,000.~~terminated in their entirety on the Delayed Draw Termination Date.

"**Delayed Draw Termination Date**" means~~, solely to the extent the Delayed Draw Notice has not been duly submitted to the Agent in accordance with this Agreement on or prior to such date,~~ November 7, 2019.

"**Disclosure Schedules**" means collectively, each of the Schedules to this Agreement.

"**Dispute**" means any pending, decided or settled litigation, opposition, interference, reexamination, injunction, claim, lawsuit, proceeding, hearing, investigation, complaint, arbitration, mediation, demand, Patent Office proceeding, decree or any other dispute, disagreement or claim.

"**Disqualified Equity Interests**" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable in whole or in part (other than (A) solely for Qualified Equity Interests and cash in lieu of fractional shares or (B) solely at the direction of the issuer), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (ii) is redeemable at the option of the holder thereof (other than (A) solely for Qualified Equity Interests and cash in lieu of fractional shares or (B) as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (iii) provides for the scheduled payments of dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Scheduled Maturity Date at the time of issuance of such Equity Interests.

"**Disqualified Person**" means any Person that is a pharmaceutical, biopharmaceutical or biotechnology company and is identified in writing by the Borrower to the Agent (and any Affiliate of any such competitor readily identifiable by name) from time to time (which shall be provided by the Agent to the Lenders); *provided* that (i) no Lender or Agent shall have any obligation to carry out due diligence in order to identify any Affiliate of any Person but shall act in good faith and (ii) none of the following Persons shall constitute a Disqualified Person: (A) an institutional investor that invests in pharmaceutical, biopharmaceutical or biotechnology companies but does not actively participate, directly or indirectly, in the management and control of any such person, (B) any *bona fide* debt fund or investment vehicle that is engaged primarily in making, purchasing, holding or otherwise investing in loans, commitments and similar extensions of credit in the ordinary course of business, or (C) a Person that would otherwise constitute an Disqualified Person by virtue of having foreclosed on or

otherwise exercised any right or remedy resulting in the acquisition or ownership of the Equity Interests or assets of a Disqualified Person and related activities, including directly or indirectly managing an Disqualified Person; *provided, further*, that the identification of any Person as a Disqualified Person after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan. Notwithstanding anything to the contrary contained in this Agreement, (a) the Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Person and (b) the Loan Parties and the Lenders acknowledge and agree that the Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Person and that the Agent shall have no liability with respect to any assignment or participation made to an Disqualified Person.

"**Dollar Equivalent**" means (i) with respect to an amount denominated in any currency other than Dollars on any date, the equivalent in Dollars of such amount determined pursuant to *Section 1.4* using the Exchange Rate and (ii) with respect to an amount denominated in Dollars on any date, the amount thereof.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means each Subsidiary of the Borrower organized under the laws of the United States of America, any state or subdivision thereof or the District of Columbia, other than (i) a FSHCO, and (ii) any direct or indirect Subsidiary of a CFC or FSHCO.

"**Early Delayed Draw Funding Date**" means the Amendment No. 1 Effective Date.

"**Early Delayed Draw Term Loans**" has the meaning assigned to such term in *Section 2.1(g)*.

"**Early Delayed Draw Term Loan Commitment**" means, with respect to any Lender, such Lender's commitment to make or otherwise fund Early Delayed Draw Term Loans, and "**Early Delayed Draw Term Loan Commitments**" means all such commitments of all Lenders in the aggregate. The amount of each Lender's Early Delayed Draw Term Loan Commitment, if any, is set forth on Appendix B or in the applicable Assignment and Assumption Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Early Delayed Draw Term Loan Commitments as of the Amendment No. 1 Effective Date, ~~prior to~~after giving effect to the funding of the Early Delayed Draw Term Loans, is $~~20,000,000.~~0.

"**EEA Financial Institution**" means (i) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country which is a parent of an institution described in clause (i) of this definition, or (iii) any financial institution established

in an EEA Member Country which is a subsidiary of an institution described in clause (i) or (ii) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means any Person that meets the requirements to be an assignee under *Section 10.4(b)(iii) and (v)* (subject to such consents, if any, as may be required under *Section 10.4(b)(iii)*).

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claims**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity.

"**Environmental Laws**" means all laws (including common law), rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices, requirements or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (i) obligations under or the violation of any Environmental Law, (ii) the generation, use, handling, transportation, presence, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials, (iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equity Interests**" means any and all shares, interests, participations or other equivalents (however designated) of equity interests of a corporation, any and all equivalent ownership interests in a Person other than a corporation (including, without limitation, partnership interests, membership interests and similar ownership interests), any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, and all other ownership or profit interests in a Person (including partnership, member or trusts interests in such Person), in each case whether voting or non-voting and whether or not outstanding on any date of determination.

"**ERISA**" means the Employee Retirement Income Security Act of 1974 and any successor thereto.

"**ERISA Affiliate**" means as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of Borrower or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Borrower or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Borrower or such Subsidiary and with respect to liabilities arising after such period for which Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) any failure by a Pension Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, in each case whether or not waived; (iii) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to a Pension Plan; (iv) a determination that a Pension Plan is in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (v) a withdrawal by the Borrower or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (vi) a complete or partial withdrawal by the Borrower or ERISA Affiliate from a Multi-employer Plan; (vii) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multi-employer Plan; (viii) the occurrence of an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multi-employer Plan; (ix) the Borrower or any of its Subsidiaries engaging in a non-exempt

"prohibited transaction" with respect to which the Borrower or any of its Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code), or with respect to which the Borrower or any such Subsidiary could otherwise be liable; or (x) the imposition of any material liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or ERISA Affiliate.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" means each of the conditions or events set forth in *Section 7.1*.

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Exchange Rate**" means, on any day, for purposes of determining the Dollar Equivalent of any currency other than Dollars, the rate at which such currency may be exchanged into Dollars, at the time of determination on such day on the applicable Bloomberg screen page for such currency. In the event that such rate does not appear on any Bloomberg screen page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon the Agent and the Borrower, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of three reputable bulge bracket investment banking firms selected by the Agent in the market where such banks' foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two (2) Business Days later; provided that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"**Excluded IPO Proceeds**" means the Net Cash Proceeds received by any Subsidiary of the Borrower from a primary offering of such Subsidiary's Equity Interests in connection with a broadly-distributed initial public offering of such Subsidiary's Equity Interests consummated pursuant to *Section 6.7(f); provided* that, for the avoidance of doubt, any Net Cash Proceeds received by the Borrower or any of its Subsidiaries from a secondary offering of a Subsidiary's Equity Interests shall not be Excluded IPO Proceeds.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to the Agent or any Lender or required to be withheld or deducted from a payment to the Agent or such Lender, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of the Agent or such Lender being organized under the laws, or having its principal office or, in the case of any Lender, its applicable lending office located in the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender

with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (A) such Lender acquires such interest in the Loan (other than pursuant to an assignment request by the Borrower under *Section 2.13(b))* or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to *Section 2.11*, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to the Agent or such Lender's failure to comply with *Section 2.11(f)* and (iv) any withholding Taxes imposed under FATCA.

"**Exclusively Licensed Material IP**" means the Intellectual Property licensed (or sublicensed) exclusively to any Loan Party and material to the business or operations of the Loan Parties taken as a whole.

"**Exit Fee**" has the meaning assigned to such term in *Section 2.19*.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by any Loan Party or any of its Subsidiaries.

"**FATCA**" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"**Federal Funds Effective Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/16th of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/16th of 1%) of the quotations for such day for such transactions received by the Agent from three national banks of recognized standing selected by it.

"**Fee Letter**" means the fee letter executed as of the date hereof among the Borrower, the Agent and Oaktree Capital Management, L.P. solely in its capacity as manager of certain funds and accounts in its Strategic Credit strategy.

"**Financial Officer Certification**" means, with respect to the annual audited financial statements and quarterly unaudited financial statements for which such certification is required hereunder, the certification of the chief financial officer, principal financial officer or principal accounting officer of the Borrower that the information contained in any such financial document fairly presents, in all material respects, the financial condition of the Borrower and its Subsidiaries (including the Scilex Subsidiary) as of the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, in the case of the quarterly

unaudited financial statements, to the absence of footnote disclosure and year-end audit adjustments.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year or such other day as changed by the Borrower or the applicable Subsidiary pursuant to *Section 6.10*.

"**Foreign Lender**" means any Lender that is not a U.S. Lender.

"**Foreign Subsidiary**" means any Subsidiary not organized under the laws of the United States of America, any state or subdivision thereof, or the District of Columbia.

"**Foreign Subsidiary Holding Company**" or "**FSHCO**" means any Subsidiary substantially all of the assets of which consist of Equity Interests and, if applicable, Indebtedness, in Foreign Subsidiaries that are CFCs or other FSHCOs.

"**Fund**" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, debt securities or similar extensions of credit in the ordinary course of its activities.

"**Funding Notice**" means a notice substantially in the form of *Exhibit A*.

"**GAAP**" means, subject to the provisions of Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Authority**" means any supra-national, national, federal, provincial, state, municipal or other government, or political subdivision thereof, and any governmental department, commission, board, bureau, court, agency, authority, regulatory body, central bank, or instrumentality or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Guarantee**" means, as to any Person, without duplication, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary

obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided* that the term "Guarantee" shall not include customary and reasonable indemnity obligations or product warranties, including to the extent entered into in connection with any acquisition or disposition of assets not otherwise prohibited under this Agreement. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guaranteed Obligations**" has the meaning assigned to such term in *Section 9.1*.

"**Guarantor**" means the Borrower, each Domestic Subsidiary of the Borrower that is a party hereto as a Guarantor as of the Closing Date and each Additional Guarantor, in each case, until such person shall cease to be a Guarantor in compliance with the provisions of this Agreement.

"**Guarantor Payment**" has the meaning assigned to such term in *Section 9.9(a)*.

"**Guaranty**" means the Guaranty made by the Guarantors under *Article IX* in favor of the Secured Parties.

"**Hazardous Materials"** means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"**Hazardous Materials Activity"** means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing.

"**Hedging Agreements**" mean (i) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements and (ii) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, commodity prices or other obligations of or owed to such Person in the conduct of its business.

"**Indebtedness**" means, with respect to any Person and without duplication, whether contingent or otherwise, (i) all obligations of such Person for borrowed money, (ii) all

obligations of such Person evidenced by bonds, notes, debentures or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreement relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the Ordinary Course in an Arm's-Length Transaction having any initial due date of not more than sixty (60) days and not more than sixty (60) days past due), (vi) all obligations of such Person under guaranteed minimum purchase, take or pay or similar performance requirement contracts, (vii) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (A) the fair market value (as determined in good faith by such Person) of such asset at such date of determination (to the extent such Indebtedness is solely recourse to such asset) and (B) the amount of such Indebtedness of such other Person, (viii) all Guarantees by such Person of Indebtedness of others, (ix) all Capitalized Lease Obligations of such Person, (x) net obligations of such Person under Hedging Agreements, (xi) all obligations of such Person as an account party in respect of letters of credit and letters of guarantee, (xii) all obligations of such Person in respect of bankers' acceptances, (xiii) all obligations of such Person with respect to the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor, (xiv) all obligations of such Person for milestone payments, license payments and similar payments pursuant to any license agreement, revenue interest agreement or royalty financing agreement, and (xv) all obligations of such Person in respect of Disqualified Equity Interests. For purposes of the immediately preceding clause (v), (vi) and (xiv), (A) any such obligations to the extent not required to be reflected as a liability on such Person's balance sheet in accordance with GAAP and (B) any obligations in respect of upfront, customary milestone, license and similar payments payable, in each case, upon such Person's achievement of sales or revenue targets for the relevant product (so long as such targets were not agreed upon by such Person for the purpose of evading any provision of this Agreement) shall not be considered Indebtedness. For purposes of the immediately preceding clause (xiv), any upfront payments or other payments that are not tied to the achievement of sale or revenue targets shall be considered Indebtedness. Notwithstanding the foregoing, Indebtedness shall be deemed not to include: (A) deferred or prepaid revenues in the Ordinary Course; (B) customary and reasonable purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; or (C) any obligations attributable to the exercise of appraisal rights in connection with mergers and acquisitions and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto.

"**Indemnified Taxes**" means (i) all Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (ii) to the extent not otherwise described in (i), Other Taxes.

"**Indemnitee**" has the meaning assigned to such term in *Section 10.3(b)*.

"**Independent Financial Advisor**" means a non-affiliated accounting, appraisal or investment banking firm or consultant, in each case of recognized national standing in the United States, that is, in the good faith determination of the Borrower, qualified to perform the task for which it has been engaged.

"**Intellectual Property**" means, collectively, all rights, priorities and privileges relating to intellectual property, whether arising under the laws of the United States of America or any other jurisdiction or political subdivision thereof (including any multinational laws or otherwise), including all inventions (whether patentable or unpatentable and whether or not reduced to practice) and discoveries, and all improvements thereto, and all know-how, confidential or proprietary information, trade secrets, data, Copyrights, Patents, Trademarks, and internet domain names, together with all common law rights and moral rights therein, and all goodwill associated therewith, and all rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"**Intercompany Indebtedness**" means any unsecured Indebtedness of the Borrower owed to any Subsidiary of the Borrower and any Indebtedness of any Subsidiary of the Borrower owed to the Borrower or any other Subsidiary.

"**Interest Period**" means, in connection with any Loan or any portion thereof bearing interest by reference to the LIBOR Rate, (i) initially, a period commencing on the Closing Date and ending on December 31, 2018 and (ii) thereafter, a period of three (3) months, commencing on the day on which the immediately preceding Interest Period expires; *provided*, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless such succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day; (ii) any Interest Period that commences on the last Business Day of a calendar month (or on which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period; and (iii) no Interest Period shall extend beyond the Scheduled Maturity Date.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by the Borrower or any of its Subsidiaries (including pursuant to any merger with any other Person that was not a Subsidiary prior to such merger) of, or of a beneficial interest in, any of the Securities of any other Person; (ii) any direct or indirect purchase or other acquisition for value, by any Subsidiary of the Borrower from any Person, of any Equity Interests of such Person; (iii) any direct or indirect loan, advance, deposit or capital contribution by the Borrower or any of its Subsidiaries to any other Person, excluding any such loan, advance or other extension of credit representing the purchase price of inventory or supplies sold by the Borrower or such Subsidiary of the Borrower to such Person in the Ordinary Course in an Arm's-Length Transaction; and (iv) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, product (or right to develop or commercialize a product), line of business, or division of such Person. The amount of any Investment shall be the original cost of such

Investment *plus* the cost of all additional Investments made in connection therewith, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

"**Involuntary Disposition**" means any loss of, damage to or destruction of, or any condemnation, seizure, confiscation or other taking for public use of, any property of a Loan Party or any of its Subsidiaries, or the requisition of the use of such property.

"**IRS**" means the United States Internal Revenue Service.

"**Joinder Agreement**" means the Joinder Agreement of each Additional Guarantor substantially in the form of *Exhibit G*.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form to the extent not a Subsidiary or the Scilex Subsidiary.

"**Lenders**" means (i) the Persons listed as Lenders on the signature pages hereto (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Assumption Agreement), (ii) any Person that has become a party hereto pursuant to an Assignment and Assumption Agreement, and (iii) any permitted successors of such Persons.

"**LIBOR Rate**" means, for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16th of 1%) equal to (i) the London interbank offered rate administered by the ICE Benchmark Administration (or any Person that takes over the administration of such rate) as published on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as reasonably determined by the Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, as the rate for Dollar deposits for the applicable Interest Period, *multiplied by* (ii) a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) established by the Board of Governors of the Federal Reserve System for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board of Governors of the Federal Reserve System); *provided*, that if such rate in (i) above is no longer published or is not available, then it shall be the rate per annum equal to the rate determined by the Agent to be the average of the rates per annum at which deposits in Dollars for delivery on the first day of Interest Period in same day funds in the approximate amount of the Loan would be offered by three major banks in the London interbank Eurodollar market at their request, determined as of approximately 11:00 a.m. London time, two (2) Business Days prior to such date; *provided, further*, that in no event shall the LIBOR Rate be less than 1.00% per annum; *provided further*, that with respect to the initial Interest Period following the Closing Date only, the LIBOR Rate shall be an interest rate per annum (rounded upwards, if necessary, to the next 1/16th of 1%) equal to the London interbank offered rate administered by the ICE Benchmark

Administration (or any Person that takes over the administration of such rate) as published on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page, as reasonably determined by the Agent) at approximately 11:00 a.m., London time, on the date that is two (2) Business Days prior to the Closing Date, as the rate for Dollar deposits for one month, which rate shall apply for the entire initial Interest Period; *provided* that in no event shall the LIBOR Rate for any initial interest period be less than 1.00% per annum.

"**LIBOR Successor Rate**" has the meaning assigned to such term in *Section 2.15*.

"**LIBOR Successor Rate Conforming Changes**" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternate Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be agreed by the Agent, the Borrower and the Required Lenders to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent, the Borrower and the Required Lenders agree).

"**License Agreement**" means any agreement now or hereafter existing pursuant to which any Loan Party and/or one or more of its Subsidiaries grants or receives any license, covenant not to assert or similar right under any Intellectual Property, where such license, covenant not to assert or similar right is material to the business or operations of the Borrower or any of its Subsidiaries as a whole, in each case, excluding any nonexclusive licenses granted to the Borrower or any of its Subsidiaries to use commercially available software or information technology services on standardized terms.

"**Lien**" means, (i) any mortgage, lien, pledge, hypothecation, charge, security interest or encumbrance of any kind, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any easement, right of way or other encumbrance on title to real property, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)) and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities; *provided* that in no event shall a non-exclusive license or sub-license of Intellectual Property be deemed to constitute a Lien if such licenses or sub-licenses are granted in the Ordinary Course and do not materially impair the value of the Collateral or interfere in any material respect with the ordinary conduct of the business of the Loan Parties.

"**Loan**" means (i) with respect to the Lenders, the Term Loans made by the Lenders to the Borrower pursuant to *Section 2.1* as adjusted by any Assignment and Assumption Agreement to which any Lender is a party, and (ii) with respect to any other Lender, the portion of the Term Loans assigned to and assumed by such other Lender pursuant to an Assignment and

Assumption Agreement, as adjusted by any Assignment and Assumption Agreement to which such other Lender is a party.

"**Loan Documents**" means this Agreement, the Notes, the Guaranty, any Joinder Agreement, the Collateral Documents, the Fee Letters, the Amendment No. 1 Side Letter and any other documents, instruments, certificates or agreements executed and delivered by a Loan Party for the benefit of the Agent or any Lender in connection with this Agreement, the Loans or the Collateral, in each case from and after the effective date of such document, instrument, certificate or agreement. For the avoidance of doubt, (i) any warrants to purchase Equity Interests of the Borrower held by the Lenders or their Affiliates from time to time and any registration rights agreement executed in connection therewith shall not be considered "Loan Documents" and (ii) from and after the Amendment No. 2 Effective Date, the Amendment No. 1 Side Letter shall constitute a "Loan Document" for all purposes under this Agreement and the other Loan Documents notwithstanding that at the time such side letter was executed, Section 4 thereof provided that it would not be considered a "Loan Document".

"**Loan Party**" means each of the Borrower and each Guarantor.

"**Loan Party Intellectual Property**" means Intellectual Property owned by any Loan Party or any of its Subsidiaries.

"**Material Adverse Effect**" means any effect, event, matter or circumstance which has, or would reasonably be expected to have, a material adverse effect on: (i) the business, assets, financial condition or operations of the Loan Parties on a consolidated basis; (ii) the ability of the Loan Parties to comply with their payment obligations or any of their other material obligations under the Loan Documents; (iii) the legality, validity or enforceability of any of the Loan Documents or the rights and remedies of the Agent or the Lenders thereunder; or (iv) the effectiveness or ranking of any Lien on the Collateral.

"**Material Agreements**" means (i) those agreements listed on *Schedule 4.15* (regardless of amount) and (ii) all License Agreements, purchase agreements, supply agreements, manufacturing agreements, distribution agreements, research agreements, customer agreements, right of way or occupancy agreements, lease agreements, consulting agreements, management agreements and employment agreements, in each case, to the extent the failure of which to maintain or remain in compliance with which would cause a Material Adverse Effect, and (iii) other agreements to the extent the failure of which to maintain or remain in compliance with which would cause a Material Adverse Effect and any such other agreement involves amounts payable by a Loan Party on an annual basis in excess of $1,000,000, but excluding such other agreements that have a remaining term of one year or less involving amounts for the remaining term of such other agreements on an aggregate basis not in excess of $3,000,000.

"**Material Indebtedness**" means Indebtedness (other than the Loans) of any one or more of the Borrower and any Subsidiary in an aggregate amount exceeding $5,000,000.

"**Material Loan Party Intellectual Property**" means the Loan Party Intellectual Property that is material to the business or operations of the Loan Parties, taken as a whole.

"**Material Subsidiary**" means, at any time, any Subsidiary of the Borrower, or any group of Subsidiaries collectively, which, together with their respective consolidated Subsidiaries, individually or in the aggregate (a) contributed at least five percent (5%) of consolidated net revenues of the Borrower and its Subsidiaries for the four Fiscal Quarter period most recently ended or (b) represented at least five percent (5%) of consolidated total assets of the Borrower and its Subsidiaries as of the last day of the most recently ended Fiscal Quarter, in each case as determined on a consolidated basis in accordance with GAAP.

"**Maturity Date**" means the Scheduled Maturity Date, or such earlier date on which all of the Loans become due and payable, whether by voluntary or mandatory prepayment, acceleration following an Event of Default or otherwise pursuant to this Agreement.

"**Maximum Rate**" has the meaning assigned to such term in *Section 10.11*.

"**Minimum Liquidity Amount**" has the meaning assigned to such term in *Section 6.15*.

"**Moody's**" means Moody's Investors Service, Inc.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**Net Cash Proceeds**" means an amount equal to, without duplication (i) cash payments actually received (including any cash actually received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of installment payment, but only when actually received)), *minus* (ii) the sum of (A) any taxes payable as a result of any gain recognized directly as a result of the event leading to the cash payment, (B) any direct out-of-pocket selling costs, fees and expenses (including, without limitation, customary underwriting discounts, fees and commissions) incurred as a result of the event leading to the cash payment and paid to unaffiliated third parties and (C) in the case of an Asset Sale or Involuntary Disposition, the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than Obligations under the Loan Documents) that is secured by a Lien (other than a Lien that ranks *pari passu* with or subordinated to the Liens securing the Obligations) on the asset subject to such Asset Sale or Involuntary Disposition that is required to be repaid (and is timely repaid) in connection with such Asset Sale or Involuntary Disposition.

"**Non-Core Assets**" means assets of the Borrower or its Subsidiaries, excluding the Specified Assets.

"**Non-Loan Party Cap**" means an amount equal to $5,000,000.

"**Note**" means, with respect to any Lender, a promissory note of the Borrower payable to the order of such Lender in form attached as *Exhibit E* appropriately completed.

"**Obligations**" means all obligations of every nature of the Loan Parties from time to time owed to the Agent and the Lenders under any Loan Document, whether for principal, interest (including interest which, but for the commencement of a proceeding under any Debtor Relief Law, would have accrued on any Obligation, whether or not a claim is allowed for such interest in the related insolvency proceeding), Prepayment Premium, Exit Fee, premiums, fees, expenses, indemnification or otherwise. For the avoidance of doubt, any obligations of the Borrower with respect to warrants to purchase Equity Interests of the Borrower held by the Lenders or their Affiliates from time to time or pursuant to any registration rights agreement executed in connection therewith shall not be considered "Obligations".

"**OFAC**" has the meaning assigned to such term in the definition of "Anti-Terrorism Laws."

"**Ordinary Course**" means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress.

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation, organization, amalgamation or continuance and its bylaws, (ii) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement, (iv) with respect to any limited liability company, its articles of organization and its operating agreement, and (v) with respect to any other entity, its memorandum or articles of association or other constitutional documents,. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by Governmental Authority, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such Governmental Authority.

"**Other Connection Taxes**" means, with respect to the Agent or any Lender, Taxes imposed as a result of a present or former connection between the Agent or such Lender and the jurisdiction imposing such Tax (other than connections arising from the Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to *Section 2.13(b))*.

"**Participant**" has the meaning assigned to such term in *Section 10.4(d)*.

"**Participant Register**" has the meaning assigned to such term in *Section 10.4(d)*.

"**Patent Office**" means the respective patent office (foreign or domestic) for any Patent.

"**Patents**" means all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, divisions, revisions, extensions, and reexaminations and reissues thereof in the United States of America or any other jurisdiction, and all rights to obtain any of the foregoing throughout the world, including the equivalents thereof of any Governmental Authority other than the United States of America.

"**Payment Date"** means (i) in the case of Loans bearing interest at a rate calculated based on the LIBOR Rate, the last day of every Interest Period following the Closing Date (i.e., quarterly) and the Maturity Date; and (ii) in the case of Loans bearing interest at the Alternate Base Rate, the last Business Day of every third month following the Closing Date (i.e., quarterly) and the Maturity Date.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Permitted Acquisition**" means any acquisition by the Borrower or any Loan Party, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all or substantially all of the Equity Interests of, or a business line or unit or a division of, any Person; *provided*:

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) the Loan Parties and their respective Subsidiaries shall not incur any Indebtedness in connection with such acquisition, other than to the extent the same would constitute Indebtedness permitted by *Section 6.1*;

(iv) the Loan Parties shall be in compliance with the Minimum Liquidity Amount set forth in *Section 6.15* both before and after giving effect to such acquisition;

(v) the Borrower shall have delivered to the Agent at least ten (10) Business Days prior to such proposed acquisition, notice of such proposed acquisition together with a certification from an Authorized Officer of the Borrower as to compliance with clauses (iii) and

(iv) above, together with financial information readily available to the Borrower or its Subsidiaries with respect to such acquisition; and

(vi) if such Permitted Acquisition involves a merger with or into any Loan Party, such Loan Party shall be the continuing or surviving Person and the obligations of all Loan Parties under all of the Loan Documents shall remain in full force and effect.

"**Permitted Subordinated PIK Debt**" means Indebtedness incurred by the Borrower or any Loan Party pursuant to and in accordance with *Section 6.1(f)* so long as (i) such Indebtedness does not require or provide for any cash payment of interest, fees (other than customary underwriting discounts, fees and commissions in no event in the aggregate to exceed […***…] of the principal amount of such Indebtedness, provided that such amount may be up to […***…] in a transaction in which substantially concurrently with the issuance of such Indebtedness, the proceeds of such Indebtedness are used to prepay at least $[…***…] in aggregate principal amount of the Loans in accordance with *Section 2.6*) or principal prior to the final maturity date thereof and (ii) such Indebtedness is subordinated in right of payment to the Obligations pursuant to a subordination agreement in form and substance acceptable to the Agent.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Plan**" means any of (i) an "employee benefit plan" (including such plans as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (ii) a "plan" as defined in Section 4975 of the Code or (iii) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan"; in each case which a Loan Party sponsors or maintains or to which Loan Party or a Subsidiary of a Loan Party makes, is making, or is obligated to make contributions and includes any Pension Plan.

"**Prepayment Premium**" means in the case of (i) an optional prepayment under *Section* ~~*2.6 or the termination of the Delayed Draw Term Loan Commitments in connection with the repayment in full of the Loans,*~~*2.6*, (ii) a mandatory prepayment under *Sections 2.7(a), (b), (c) and (e)*, (iii) an acceleration following an Event of Default, (iv) any payment to a Lender pursuant to *Section 2.13(b)(x)*, or (v) any other circumstance resulting in a payment on any Maturity Date occurring prior to the Scheduled Maturity Date, an amount equal to (i) if the prepayment or termination is made on or prior to the third anniversary of the Closing Date, the amount of interest that would have been paid on the principal amount of the Loans ~~(assuming that any Delayed Draw Term Loan Commitments outstanding on such payment date were funded in full and immediately prepaid on the date of determination)~~ being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the three (3) year anniversary of the Closing Date, based upon the interest rate in effect on the date of any such prepayment, *plus* three percent (3%) of the principal amount of the Loans being so repaid or prepaid and the Commitments being so terminated, or (ii) if the prepayment is made after the third anniversary of the Closing Date but on or prior to the fourth anniversary of

the Closing Date, three percent (3%) of the principal amount of the Loans being so repaid or prepaid, or (iii) if the prepayment is made after the fourth anniversary of the Closing Date, 0%; *provided* that, notwithstanding the foregoing, with respect to any optional prepayment of the Loans under *Section 2.6* on or prior to March 31, 2020, the Prepayment Premium shall be equal to three percent (3%) of the principal amount of the Loans being so repaid or prepaid.

"**Prime Rate**" means the rate of interest quoted in the print edition of *The Wall Street Journal* Money Rates Section as the Prime Rate, as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, for the Agent, such Person's "Principal Office" as set forth on *Appendix A*, or such other office as such Person may from time to time designate in writing to the Borrower and the Lenders.

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Loans or Commitments of any Lender, the percentage obtained by dividing (i) the sum of ~~(x)~~ the then outstanding principal amount of the Loans of that Lender ~~plus (y) the amount of such Lender's Delayed Draw Term Loan Commitments then in effect~~ by (ii) the sum of ~~(x)~~ the aggregate of the then outstanding principal amount of the Loans of all Lenders ~~plus (y) the aggregate amount of Delayed Draw Term Loan Commitments of all Lenders then in effect~~.

"**Products**" means each existing product or component of a product and each future product or component of a product developed, acquired, in-licensed, out-licensed, manufactured or otherwise commercialized by any Loan Party or any of its Subsidiaries, and any improvement or modification thereto and any follow-on and/or cannibalizing products with respect thereto.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified Equity Interests.

"**Register**" has the meaning assigned to such term in *Section 10.4(c)*.

"**Regulatory Approval**" means, with respect to a Product, the approval of the applicable Regulatory Authority necessary for the testing, manufacturing, use, storage, supply, promotion, marketing or sale of such Product for a particular indication in a particular jurisdiction.

"**Regulatory Authority**" means any Governmental Authority with authority over the testing, manufacture, use, storage, supply, promotion, marketing or sale of a Product in any jurisdiction.

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"**Removal Effective Date**" has the meaning assigned to such term in *Section 8.6(b)*.

"**Required Lenders**" means one or more Lenders having or holding Loans and Commitments representing more than 66 2/3% of the sum of the aggregate outstanding principal amount of all Loans and Commitments.

"**Resignation Effective Date**" has the meaning assigned to such term in *Section 8.6(a)*.

"**ROFR Provisions**" shall mean, with respect to any proposed Indebtedness which is subject to the ROFR Provisions pursuant to *Section 5.16* (the "**Subject Indebtedness**"), that, prior to the incurrence of any Subject Indebtedness, the Borrower shall (i) deliver to the Agent and each Lender a written notice describing in reasonable detail the Subject Indebtedness transaction that it is seeking to consummate, including information regarding the price and other terms and conditions of the Subject Indebtedness, the circumstances under which such Subject Indebtedness is being sought, the proposed use of proceeds and updated projections of the Borrower and its Subsidiaries and (ii) provide each Lender with a period of ten (10) Business Days after delivery of such notice and other information in which to deliver a written proposal to the Borrower if the Lender would like to have the Borrower consider obtaining such Subject Indebtedness from such Lender (an "**Interested Notice**"); *provided* that (A) no Lender shall be under any obligation to provide any Subject Indebtedness or deliver any Interested Notice and any such decision whether to provide any Subject Indebtedness shall be in such Lender's sole and absolute discretion; *provided*, *however*, if such Lender has not provided an Interested Notice within such ten (10) Business Day period, then such Lender shall be deemed to have decided not to offer to participate in the provision of such Subject Indebtedness and (B) the Borrower shall not be required to incur the Subject Indebtedness from the applicable Lender or Lenders; *provided further* that with respect to any transaction that is subject to the right of first refusal set forth in the Convertible Notes issued by the Borrower on March 26, 2018, as in effect on the date hereof, the obligations of the Loan Parties under *Section 5.16* shall be deemed modified as necessary to permit the Borrower to comply with its obligations under such provision of such Convertible Notes prior to complying with the ROFR Provisions.

"**RTX**" has the meaning assigned to such term in the definition of Specified Assets.

"**S&P**" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business.

"**San Diego GMP Facilities**" has the meaning assigned to such term in the definition of Specified Assets.

"**Sanctioned Country**" means, at any time, a country, region or territory which is itself the subject or target of any comprehensive territorial Sanctions.

"**Sanctioned Person**" means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by any Sanctions Authority, (ii) any Person operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (i) or (ii).

"**Sanctions**" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any Sanctions Authority.

"**Sanctions Authority**" means the U.S. government (including OFAC and the U.S. Department of State), the United Nations Security Council, Her Majesty's Treasury, the European Union, any European Union member state or any other relevant sanctions authority.

"**Scheduled Maturity Date**" means

(i) with respect to the Early Delayed Draw Term Loans,

(a) in the event that both (I) the Delayed Draw Eligibility Event has occurred on or prior to May 3, ~~2020 and (II) the conditions set forth in *Section 3.2* are satisfied on or before May 3, 2020,~~2020, and (II) as of May 3, 2020, (x) all representations and warranties contained in this Agreement and the other Loan Documents are true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date and (y) no event shall have occurred and be continuing that would constitute a Default or Event of Default, in each case as determined by the Agent, November 7, 2023 or

(b) otherwise, May 3, 2020 and

(ii) with respect to the Loans other than the Early Delayed Draw Term Loans, November 7, 2023.

"**Scilex Indenture**" means the Indenture, dated as of September 7, 2018, among the Scilex Subsidiary, as issuer, the Borrower, as parent guarantor, and U.S. Bank National Association, as trustee and collateral agent, as in effect on the date hereof.

"**Scilex Letter of Credit**" means the Irrevocable Standby Letter of Credit, dated September 7, 2018, with reference number 1, issued by the Borrower in favor of the Scilex Subsidiary with a face amount of $35,000,000, as in effect on the date hereof.

"**Scilex Notes**" means the Senior Secured Notes due 2026 issued by the Scilex Subsidiary pursuant to the Scilex Indenture on September 7, 2018 in an initial aggregate principal amount of $224,000,000.

"**Scilex Subordinated Loan**" means a loan, unsecured and by its terms subordinated in right of payment to the Scilex Notes, to be made by the Borrower to the Scilex Subsidiary in the single lump-sum amount of $35,000,000 pursuant to the Scilex Letter of Credit following the Scilex Subsidiary's drawing on the Scilex Letter of Credit.

"**Scilex Subsidiary**" means Scilex Pharmaceuticals Inc., a Delaware corporation ("**Scilex Parent**"), and each Subsidiary thereof; *provided* the Loan Parties and any other Person which directly or indirectly owns any Equity Interest in Scilex Parent does not directly own any Equity Interests in such Subsidiary.

"**Secured Parties**" means the Agent and the Lenders.

"**Securities**" means any Equity Interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Solvency Certificate**" means a Solvency Certificate signed on behalf of the Borrower by its chief financial officer, principal financial officer or principal accounting officer, substantially in the form of *Exhibit F*.

"**Solvent**" means, with respect to the Loan Parties on a consolidated basis, that as of the date of determination, the Loan Parties, on a consolidated basis, are "solvent" or not "unable to pay its debts" within the meaning given to such terms and similar terms under applicable laws relating to fraudulent transfers and conveyances or general insolvency law, including that (i) the present fair saleable value of the assets of the Loan Parties on a consolidated basis is not less than the amount that will be required to pay the probable liabilities of the Loan Parties on their debts (including contingent, unmatured and unliquidated liabilities) as they become absolute and matured, (ii) the Loan Parties will not, on a consolidated basis, have unreasonably small capital in relation to their business, (iii) the Loan Parties, on a consolidated basis, will have sufficient cash flow to enable them to pay their debts as they mature, and (iv) the value of Loan Parties assets, on a consolidated basis, is less than the amount of their liabilities, taking into account their contingent and prospective liabilities.

"**Specified […***…] Transaction**" means […***…].

"**Specified […***…] Transaction**" means […***…].

"**Specified Assets**" means the following assets of the Borrower and its Subsidiaries, whether tangible or intangible, or real, personal or mixed:

(i) assets comprising the BioServ business;

(ii) assets comprising the Levena Biopharma business;

(iii) assets comprising the Virttu Biologics business;

(iv) assets comprising the Sofusa business;

(v) assets comprising the G-MAB antibody business;

(vi) assets comprising the resiniferatoxin ("**RTX**") business;

(vii) the Borrower's direct or indirect investments in Celularity, Inc.;

(viii) the Borrower's direct or indirect investments in NantCell, Inc., NantBioScience, Inc., Immunotherapy NANTibody, LLC and NantCancerStemCell, LLC;

(ix) the Borrower's direct or indirect investments in ImmuneOncia Therapeutics, LLC;

(x) the Borrower's direct or indirect investments in Virttu Biologics Limited;

(xi) assets relating to the GMP manufacturing facilities located at (i) 4955 Judicial Drive, San Diego, CA and (ii) 8395 Camino Santa Fe, San Diego, CA, including the Borrower's leasehold interest in such facilities and all owned or leased equipment, inventory and other assets related to the Borrower's and its Subsidiaries' operations at such facilities or any other replacement or other facility which holds assets now or in the future held or of the type held at any of such facilities (collectively, the "**San Diego GMP Facilities**");

(xii) any assets acquired by any Loan Party after the Closing Date with a fair market value at the time of such acquisition equal to $25,000,000 or greater; and

(xiii) any other assets of the Borrower and its Subsidiaries (other than the Scilex Subsidiary and the Equity Interests of the Scilex Subsidiary) designated in writing to the Borrower by the Agent from time to time (it being acknowledged and agreed that on November 15, 2019, the Agent designated all such assets of the Borrower and such Subsidiaries as Specified Assets in accordance with this Agreement and such designation remains in effect).

"**Specified Transaction**" means each of (i) the Specified […***…] Transaction, (ii) the Specified […***…] Transaction, and (iii) the Specified […***…] Transaction.

"**Specified […***…] Transaction**" means […***…].

"**Step-Up Date**" means the first date after the Amendment No. 2 Effective Date on which either (i) any Specified Transaction has occurred or (ii) the Borrower has […***…] pursuant to and in satisfaction of its obligations under *Section 5.18*.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided*, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Notwithstanding the foregoing, the Scilex Subsidiary shall be deemed not to be a Subsidiary except for purposes of *Sections 4.7*, *4.25*, *5.7(b)* and *6.13*.

"**Tax Distributions**" means distributions made directly or indirectly to the Borrower from any Subsidiary (including the Scilex Subsidiary) of Borrower to enable Borrower to pay any income taxes due and owing by it in respect of the income of such Subsidiary for any taxable period, provided that the amount of such distributions in the aggregate for any taxable period for this purpose shall not exceed the net amount of the relevant income tax that Borrower actually owes for such taxable period to the relevant taxing authority.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges in the nature of taxes and imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Loans**" means each of the Closing Date Term Loans~~, the Delayed Draw Term Loans~~ and the Early Delayed Draw Term Loans.

"**Termination Conditions**" has the meaning assigned to such term in *Section 9.3*.

"**Trademarks**" means (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and, in each case, all goodwill associated therewith, whether now existing or hereafter adopted or acquired, all registrations and recordings thereof and all applications in connection therewith, in each case whether in the United States Patent and Trademark Office or in any similar office or agency of the United States of America or any other jurisdiction or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (ii) the right to obtain all renewals thereof.

"**Unfunded Pension Liability**" means with respect to a Pension Plan, the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA or other applicable law, over the current value of that Pension Plan's assets, determined in accordance with the

assumptions used for funding the Pension Plan pursuant to Section 412 of the Code or other applicable laws for the applicable plan year.

"**U.S. Lender**" means any Lender that is a United States person as defined in Section 7701(a)(30) of the Code.

"**USA PATRIOT Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001).

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall be construed in conformity with, and shall have the meanings assigned to them in accordance with, GAAP applied on a consistent basis as in effect from time to time, and all accounting determinations required to be made pursuant to any Loan Document shall, unless otherwise expressly provided in such Loan Document, be made in accordance with GAAP. Financial statements and other information required to be delivered to the Lenders pursuant to *Sections 5.1(a)* and *5.1(b)* shall be prepared in accordance with GAAP as in effect at the time of such preparation (except, in the case of unaudited statements, for the absence of footnote disclosure and year-end audit adjustments). Notwithstanding anything in this Agreement to the contrary, the accounting for capital leases and operating leases under GAAP as in effect on the date hereof (including, without limitation, Accounting Standards Codification 840) shall apply for the purposes of determining compliance with the provisions of this Agreement, including the definitions of Capitalized Lease Obligations.

Section 1.3 Interpretation, etc.

(a) The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined.

(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(c) The words "include", "includes" and "including", when following any general statement, term or matter, shall be deemed to be followed by the phrase "without limitation".

(d) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(e) Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as amended, restated, amended and restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on such assignments set forth herein), (iii) the words "herein", "hereof", "hereto" and "hereunder" and "this Agreement", and words of similar import shall be construed to refer to this Agreement in its entirety, including the appendices, exhibits and schedules hereto, and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Schedules and Exhibits shall be construed to refer to Articles and Sections of, and Schedules and Exhibits to, this Agreement, (v) any reference to any law, statute or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented and in effect from time to time and any successor legislation thereto and regulations promulgated thereunder, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(f) In computing periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each means "to but excluding", and the word "through" means "to and including".

(g) Each covenant in this Agreement shall be given independent effect, and the fact that any act or omission may be permitted by one covenant and prohibited or restricted by any other covenant (whether or not dealing with the same or similar events) shall not be construed as creating any ambiguity, conflict or other basis to consider any matter other than the express terms hereof in determining the meaning or construction of such covenants and the enforcement thereof in accordance with their respective terms.

(h) This Agreement is being entered into by and between competent and sophisticated parties who are experienced in business matters and represented by legal counsel and other advisors, and has been reviewed by the parties and their legal counsel and other advisors. Therefore, any ambiguous language in this Agreement will not be construed against any particular party as the drafter of the language.

(i) Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 1.4 Currency Translation. For purposes of determining compliance with respect to baskets, thresholds and other provisions of the Loan Documents delineated in Dollars, amounts in currencies other than Dollars shall be translated into Dollars at the Exchange Rates in effect on the date of the transaction applicable thereto and shall not take into account the fluctuations in any Exchange Rates thereafter. In furtherance of the foregoing and not in limitation thereof, for purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of

Indebtedness denominated in a non-U.S. currency shall be calculated based on the relevant Exchange Rate in effect on the date such Indebtedness was incurred; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in the same non-U.S. currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant Exchange Rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced *plus* the aggregate amount of accrued but unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including upfront fees, original issue discount or similar fees) incurred in connection with such refinancing. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated by the Loan Party based on the Exchange Rate applicable to the currencies in which such new Indebtedness is denominated that is in effect on the date of such refinancing.

ARTICLE II
TERM LOANS

Section 2.1 Term Loans.

(a) Subject to the terms and conditions of this Agreement, each Lender agrees to make term loans to the Borrower in an amount equal to such Lender's Closing Date Term Loan Commitment (the "**Closing Date Term Loans**") on the Closing Date. Upon the funding of the Term Loans on the Closing Date, the Lenders' Closing Date Term Loan Commitments shall automatically terminate.

(b) To request the Term Loans on the Closing Date, the Borrower shall deliver to the Agent a Funding Notice not later than 12:00 p.m., New York City time, three (3) Business Days before the Closing Date (or such shorter period of time as may be approved by the Agent). Upon receipt of such Funding Notice, Agent shall promptly notify the Lenders thereof. Such Funding Notice shall be signed by a duly authorized representative of the Borrower and shall be in the form of *Exhibit A*. The written Funding Notice shall specify the following information in compliance with *Section 2.1*:

(i) the aggregate amount of the requested Closing Date Term Loans;

(ii) the date of such borrowing; and

(iii) the location and number of an account designated by the Borrower to which funds are to be disbursed (which may be in the form of a flow of funds memorandum, in form and substance reasonably satisfactory to the Agent and the Required Lenders attached to the Funding Notice).

(c) Upon all of the conditions set forth in *Section 3.1* having been satisfied or waived, the Lenders shall make the Closing Date Term Loans to be made by them available to

the Borrower by wire transfer of immediately available funds at the account and/or accounts specified therefor in the flow of funds agreement attached to the Funding Notice. The Borrower shall promptly notify the Agent upon receipt of the Closing Date Term Loans.

(d) ~~Subject to the terms and conditions of this Agreement, each Lender agrees to make term loans to the Borrower in an amount equal to such Lender's Delayed Draw Term Loan Commitment (the "**Delayed Draw Term Loans**") in a single installment on the Delayed Draw Funding Date. Upon the earlier of (i) the funding of the Delayed Draw Term Loans or (ii) the Delayed Draw Termination Date, the Lenders' Delayed Draw Term Loan Commitments shall automatically terminate.~~[reserved].

(e) ~~Within three (3) Business Days after the Delayed Draw Eligibility Event, the Borrower shall deliver to Agent a notice substantially in the form of Exhibit J (the "**Delayed Draw Notice**") signed by a duly authorized representative of the Borrower, which notice shall (i) state that the Delayed Draw Eligibility Event has occurred and (ii) specify the location and number of an account designated by Borrower to which funds are to be disbursed on the Delayed Draw Funding Date. Promptly following receipt of the Delayed Draw Notice, the Agent shall forward the Delayed Draw Notice to each Lender with a Delayed Draw Term Loan Commitment.~~[reserved].

(f) ~~Upon all of the conditions set forth in *Section 3.2* having been satisfied as determined by the Agent (or waived by the Agent in its sole discretion), the Lenders shall make the Delayed Draw Term Loans to be made by them available to the Borrower on the Delayed Draw Funding Date by wire transfer of immediately available funds at the account specified by the Borrower therefor. The Borrower shall promptly notify the Agent upon receipt of the Delayed Draw Term Loans.~~[reserved].

(g) Subject to the terms and conditions of this Agreement, each Lender agrees to make term loans to the Borrower in an amount equal to such Lender's Early Delayed Draw Term Loan Commitment (the "**Early Delayed Draw Term Loans**") in a single installment on the Early Delayed Draw Funding Date. Upon the funding of the Early Delayed Draw Term Loans, the Lenders' Early Delayed Draw Term Loan Commitments shall automatically terminate.

(h) To request the Early Delayed Draw Term Loans on the Early Delayed Draw Funding Date, the Borrower shall deliver to the Agent a Funding Notice not later than 12:00 p.m., New York City time, one (1) Business Day before the Early Delayed Draw Funding Date (or such shorter period of time as may be approved by the Agent). Upon receipt of such Funding Notice, Agent shall promptly notify the Lenders thereof. Such Funding Notice shall be signed by a duly authorized representative of the Borrower and shall be in the form of *Exhibit A*. The written Funding Notice shall specify the following information in compliance with *Section 2.1*:

(i) the aggregate amount of the requested Early Delayed Draw Term Loans;

(ii) the date of such borrowing; and

(iii) the location and number of an account designated by the Borrower to which funds are to be disbursed (which may be in the form of a flow of funds memorandum, in form and substance reasonably satisfactory to the Agent and the Required Lenders attached to the Funding Notice).

(i) Upon all of the conditions set forth in *Section 3.3* and Section 4 of Amendment No. 1 having been satisfied as determined by the Agent (or waived by the Agent in its sole discretion), the Lenders shall make the Early Delayed Draw Term Loans to be made by them available to the Borrower on the Early Delayed Draw Funding Date by wire transfer of immediately available funds at the account specified by the Borrower therefor. The Borrower shall promptly notify the Agent upon receipt of the Early Delayed Draw Term Loans.

(j) Any principal amounts borrowed under this *Section 2.1* which are repaid may not be reborrowed.

Section 2.2 Use of Proceeds.

(a) The proceeds of the Term Loans shall be applied by the Borrower as follows: (i) to payment of fees and expenses incurred in connection with the transactions contemplated in this Agreement and the Fee Letters and (ii) for product development and other working capital and general company purposes not in violation of this Agreement.

(b) No portion of the proceeds of any Loan shall be used in any manner that causes or might cause such Loan or the application of such proceeds to violate Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof.

Section 2.3 Evidence of Debt.

(a) The Borrower agrees to execute and deliver to the Lenders (i) on the Closing Date a Note or Notes evidencing the Closing Date Term Loans in the aggregate stated principal amount of up to One Hundred Million and No/Dollars ($100,000,000), and (ii) on the Early Delayed Draw Funding Date, additional Notes evidencing the Early Delayed Draw Term Loans in the aggregate principal amount of up to Twenty Million Dollars ($20,000,000) ~~and (iii) on the date on which the Delayed Draw Term Loans are funded, additional Notes evidencing the Delayed Draw Term Loans in the aggregate principal amount of up to Thirty Million Dollars ($30,000,000)~~. Any Lender may request that the Loans held by it be evidenced by a Note and in such event, the Borrower shall execute and deliver to such Lender a Note, which shall evidence such Lender's Term Loans. Each Lender may attach schedules to its Note and endorse thereon the date, type, amount and maturity of its Loans and payments with respect thereto.

(b) Each Lender may maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loan made by it and each repayment and prepayment in respect of such Loan. Any such recordation

shall be conclusive and binding on the Borrower, absent manifest error; *provided* that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern absent manifest error.

Section 2.4 Interest.

(a) Except as otherwise set forth in this Agreement, each Loan shall bear interest on the unpaid principal amount thereof from the date made to repayment (whether by acceleration or otherwise) at the LIBOR Rate *plus* the Applicable Margin.

(b) Upon the occurrence and during the continuance of (i) an Event of Default or (ii) a Default and following written notice from the Agent, the principal amount of all Loans outstanding and the outstanding amount of all other Obligations then owing under the Loan Documents shall thereafter bear interest payable upon demand, at a rate that is 2.00% per annum in excess of the interest rate otherwise payable for the Loans. Payment or acceptance of the increased rates of interest provided for in this *Section 2.4(b)* is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of the Agent or any Lender.

(c) All interest on the Loans shall be computed (i) in the case of Loans bearing interest at a rate based on the LIBOR Rate, on the basis of a 360-day year or (ii) in the case of Loans bearing interest at the Alternate Base Rate, on the basis of a 365 or 366 day year, as the case may be, in each case, on a day-to-day basis for the actual number of days elapsed.

(d) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears to the Agent for the benefit of the Lenders on and to (i) each Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, whether by acceleration or on the Scheduled Maturity Date.

Section 2.5 Repayment of Loans. On the Scheduled Maturity Date with respect to any Term Loans, the Borrower shall pay in full all outstanding Obligations, including the Exit Fee, in respect of such Term Loans. On any Maturity Date occurring prior to the Scheduled Maturity Date, the Borrower shall pay in full all outstanding Obligations, which shall include the Prepayment Premium, if applicable, and the Exit Fee.

Section 2.6 Optional Prepayment.

(a) The Term Loans may be prepaid in whole or in part (and solely in minimum principal increments of $5,000,000 or all the remaining amounts outstanding hereunder), on any Business Day upon not less than five (5) Business Days' prior written notice from the Borrower to the Agent, together with the payment of all accrued and unpaid interest thereon, the Prepayment Premium, if applicable, the Exit Fee and other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents. ~~Upon any prepayment in full of the Term Loans pursuant to this *Section 2.6(a)* or any prepayment in part to the extent the principal amount of the Loans remaining outstanding after such prepayment is $25,000,000 or~~

~~less, any outstanding Delayed Draw Term Loan Commitments then in effect shall automatically terminate and the Borrower shall pay the Prepayment Premium with respect to such Delayed Draw Term Loan Commitments.~~

(b) ~~The Borrower may not terminate the Delayed Draw Term Loan Commitments in whole or in part except upon the repayment in full in cash of all outstanding Loans hereunder, in which event the Borrower agrees to pay the Prepayment Premium with respect to the Delayed Draw Term Loan Commitments so terminated.~~ [Reserved].

(c) All prepayments under this *Section 2.6* shall be subject to *Section 2.8 and Section 2.14*.

Section 2.7 Mandatory Prepayments.

(a) *Change of Control*. Immediately upon a Change of Control, the Borrower shall prepay all of the outstanding Loans and all other Obligations in full *plus* the Prepayment Premium, if applicable, and the Exit Fee.

(b) *Dispositions*. The Loans are subject to mandatory prepayment by the Loan Parties from time to time in an amount equal to the Applicable Asset Sale Prepayment Amount of the Net Cash Proceeds (other than Excluded IPO Proceeds) received by any Loan Party or any of its Subsidiaries as a result of any:

(i) Asset Sale (other than an Asset Sale permitted pursuant to *Sections 6.7(a), (b), (c), (d), (e) or (*~~*e*~~*k)*); or

(ii) Involuntary Disposition;

and, in each case *plus* the Prepayment Premium, if applicable, and the Exit Fee.

Each such mandatory prepayment pursuant to this clause (b) shall be made within three (3) Business Days following receipt of such Net Cash Proceeds by such Loan Party or such Subsidiary; *provided*, *however*, that if the Loan Party or its Subsidiary receives Net Cash Proceeds as a result of any such Asset Sale or Involuntary Disposition (other than resulting from the disposition of Specified Assets) in an aggregate amount less than $5,000,000 for all such Asset Sales or Involuntary Dispositions after the Closing Date, then the Loan Party or its Subsidiary may apply such Net Cash Proceeds to the purchase price of replacement property or assets or other property or assets used by such Loan Party or its Subsidiary within one hundred and eighty (180) days (or such later date as set forth below) after the date of receipt of such Net Cash Proceeds in lieu of making such mandatory prepayment; *provided* that to the extent any portion of such Net Cash Proceeds is not so applied and the Loan Parties or their Subsidiaries have not entered into any commitment within such 180 day period to so purchase such property or assets, then the portion of such Net Cash Proceeds not so expended or committed shall be applied as a mandatory prepayment pursuant to this *Section 2.7(b)* no later than the end of such one hundred and eighty (180) day period; *provided further* that to the extent any portion of such Net Cash Proceeds is committed to purchase such property or assets within such 180 day period,

but such purchase is not consummated within 270 days of the date of receipt of such Net Cash Proceeds, then the portion of such Net Cash Proceeds not so expended shall be applied as a mandatory prepayment pursuant to this *Section 2.7(b)* no later than the end of such 270 day period.

(c) *Debt Issuances*. Immediately upon receipt by any Loan Party or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by *Section 6.1*, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, *plus* the Prepayment Premium, if applicable, and the Exit Fee.

(d) *General*. All prepayments under this *Section 2.7* shall be subject to *Section 2.8 and Section 2.14*. Borrower shall provide Agent written notice not later than three (3) Business Days prior to any prepayment under this *Section 2.7*; *provided*, that failure by Borrower to deliver such notice shall not affect Borrower's obligation to make any such prepayment. Notwithstanding anything in this *Section 2.7* to the contrary, any Lender may elect, by written notice to the Agent no later than 12:00 pm New York City Time, one (1) Business Day prior to the prepayment date (or such later time as the Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this *Section 2.7*. Any Lender that fails to deliver such notice to the Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement.

(e) Any prepayments required pursuant to this *Section 2.7* are in addition to any Default or Event of Default rights or remedies the Secured Parties may have.

(f) Notwithstanding anything to the contrary contained herein, to the extent that any mandatory prepayments would otherwise be required to be made pursuant to *Section 2.7(b)* out of the Net Cash Proceeds in respect of any Asset Sale or Involuntary Disposition attributable to a Foreign Subsidiary of the Borrower, such prepayments shall not be required to be made to the extent that the Borrower determines in good faith that such prepayment would (x) result in material adverse tax consequences or (y) be prohibited or restricted under (i) local law (e.g., financial assistance, corporate benefit, restrictions on upstreaming of cash intra-group and the fiduciary and statutory duties of the directors of the relevant Subsidiaries) and (ii) material constituent document restrictions (including as a result of minority ownership) and other material agreements of such Foreign Subsidiaries not entered into in contemplation of or in order to evade the restrictions in this Agreement or the other Loan Documents. The non-application of any prepayment amounts as a result of this *Section 2.7(f)* will not, for the avoidance of doubt, constitute a Default or an Event of Default, and such amounts shall be available for working capital and other general corporate purposes of the Borrower and its Subsidiaries. The Borrower shall use, and shall cause its Subsidiaries to use, commercially reasonable efforts to overcome or eliminate any such restrictions (other than restrictions pursuant to local law) to make the relevant prepayment. Notwithstanding the foregoing, any prepayments required after application of the above provision shall be net of any costs, fees, expenses or taxes incurred by the Borrower or any

of its Affiliates or any of their equity owners and arising as a result of compliance with the preceding sentence and the Borrower and its Subsidiaries shall be permitted to make directly or indirectly, a dividend or distribution to their Affiliates in an amount sufficient to cover such tax liability.

Section 2.8 General Provisions Regarding Payments.

(a) All payments by any Loan Party of principal, interest, fees and other Obligations shall be made in Dollars and in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Agent not later than 2:00 p.m. (New York time) on the date due to the Agent's Account; funds received by the Agent after that time on such due date may, at Agent's sole discretion, be deemed to have been paid by such Loan Party on such due date or the next succeeding Business Day.

(b) Subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest under this Agreement.

(c) The Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing to the Agent from time to time, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder and all other Obligations.

(d) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to *Section 7.1*, all payments or proceeds received by the Agent or any Lender in respect of any of the Obligations (except as expressly provided elsewhere in a Loan Document), shall be forwarded to the Agent and applied in full or in part by the Agent against the Obligations in the following order of priority: ***first***, (i) to the payment of all reasonable costs and expenses of any sale, collection or other realization, and all amounts for which the Agent is entitled to indemnification hereunder (in its capacity as the Agent and not as a Lender) and all advances made by the Agent hereunder for the account of the applicable Loan Party, (ii) to the payment of all reasonable costs and expenses paid or incurred by the Agent in connection with the exercise of any right or remedy hereunder or under any Loan Document, all in accordance with the terms hereof or thereof, and (iii) to the payment of any fees or other amounts then-owing to the Agent (in its capacity as such and not as a Lender) hereunder or under any other Loan Document; ***second***, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders; and ***third***, to the extent of any excess of such proceeds, to the payment to or upon the order of the applicable Loan Party or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Section 2.9 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off, appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this *Section 2.9* are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff, appropriation and application.

Section 2.10 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loan and accrued interest thereon or other such obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent in writing of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in its Loan to any assignee or participant, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

Section 2.11 Taxes.

(a) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any

applicable law (as determined in the good faith discretion of the Agent or any Loan Party) requires the deduction or withholding of any Tax from any such payment by the Agent or any Loan Party, then the Agent or relevant Loan Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this *Section 2.11*) the Agent or applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) *Payment of Other Taxes by the Loan Parties*. Without limiting the provisions of *Section 2.11(a)*, each relevant Loan Party shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) *Indemnification by the Loan Parties*. The Loan Parties shall jointly and severally indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this *Section 2.11*) payable or paid by the Agent or such Lender or required to be withheld or deducted from a payment to the Agent or such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) *Indemnification by the Lenders.* Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of *Section 10.4(d)* relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (d).

(e) *Evidence of Payments*. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this *Section 2.11*, such Loan Party shall deliver to the Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(f) *Status of Lenders*.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Lender shall deliver to the Borrower and the Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest"

article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W 8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the

Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) *Treatment of Certain Refunds*. If any party determines, in its reasonable discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this *Section 2.11* (including by the payment of additional amounts pursuant to this *Section 2.11*), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this *Section 2.11* with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund has not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) *Survival*. Each party's obligations under this *Section 2.11* shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Loans and the repayment, satisfaction or discharge of all obligations under any Loan Document, and the termination of this Agreement.

(i) *Defined Terms.* For purposes of this *Section 2.11*, the term "applicable law" includes FATCA.

Section 2.12 Increased Costs.

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject the Agent or any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or the Agent of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender with respect thereto (whether of principal, interest or any other amount) then, upon request of such Lender or the Agent, the Borrower will pay to such Lender or the Agent such additional amount or amounts as will compensate such Lender or the Agent, as applicable, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loan maintained by such Lender to a level below that which such Lender or such Lender's holding company, if any, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement*. A certificate of a Lender or the Agent setting forth the amount or amounts necessary to compensate such Lender or its holding company or the Agent, as the case may be, as specified in *Section 2.12(a)* or *Section 2.12(b)* and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay the Agent or such Lender, as applicable, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests*. Failure or delay on the part of the Agent or any Lender to demand compensation pursuant to this *Section 2.12* shall not constitute a waiver of the Agent's or such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Agent or any Lender pursuant to this *Section 2.12* for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that the Agent or such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of the Agent's or such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.13 Mitigation Obligations; Replacement of Lenders.

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under *Section 2.12*, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 2.11*, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to *Section 2.11* or *2.12*, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders*. If any Lender (x) fails to agree to any amendment, consent or waiver requested by the Borrower or (y) requests compensation under *Section 2.12*, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to *Section 2.11* and, in each case under this clause (y), such Lender has declined or is unable to designate a different lending office in accordance with *Section 2.13(a)*, then the Borrower may, at such Lender's sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, *Section 10.4* other than the Agent's or any Lender's consent), all of its interests, rights (other than its existing rights to payments pursuant to *Section 2.11* or *Section 2.12*) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that:

(i) the Borrower shall have paid to the Agent the assignment fee and shall have provided all of the documentation and information in accordance with *Section 10.4*;

(ii) such Lender shall have received payment of an amount equal to (A) the outstanding principal of its Loans, (B) accrued interest thereon, (C) if such Lender is being replaced pursuant to clause (x) of *Section 2.13(b)* above, the Prepayment Premium and Exit Fee with respect to such Lender's Loans ~~and Delayed Draw Term Loan Commitments~~ that would have been payable to such Lender in connection with a voluntary prepayment of such Lender's Loans ~~and, in the case of the Delayed Draw Term Loan Commitments, assuming that such Delayed Draw Term Loan Commitments were funded in full and immediately prepaid in full on the date of determination~~, (D) accrued fees and (E) all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under *Section 2.14*) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under *Section 2.12* or payments required to be made pursuant to *Section 2.11*, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.14 Break Funding Payments. If (i) any payment of principal of any Loan is made other than on the last day of an Interest Period relating to such Loan, as a result of (w) a prepayment pursuant to *Sections 2.6* or *2.7(a), (b), (c) or (d)*, (x) an assignment required by *Section 2.13(b)*, (y) *Section 2.15* or (z) acceleration of the maturity of the Loans and the outstanding principal amount of the Loans pursuant to *Section 7.1*; or (ii) the Borrower fails to make a principal or interest payment with respect to any Loan on the date such payment is due and payable, then the Borrower shall, upon demand by any Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional actual and documented losses, or reasonable costs or expenses which it actually incurs as a result of any such payment, including any cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to maintain such Loan.

Section 2.15 Maintaining Loans Bearing Interest at the LIBOR Rate.

(a) *Market Disruption Affecting LIBOR Rate*. If on any date:

(i) the Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that by reasons of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate for Loans bearing interest at the LIBOR Rate; or

(ii) the Agent is advised by the Lenders holding at least 51% of the Loans outstanding that the LIBOR Rate will not adequately and fairly reflect the cost to such Lenders of maintaining their Loans at the LIBOR Rate (*provided* that this clause (ii) shall not apply so long as the Lenders and their Affiliates are the sole Lenders);

then, the Agent shall on such date give notice (by electronic communication) to the Borrower and each Lender of such determination or notification, whereupon (x) no Loans shall be maintained at the LIBOR Rate; and (y) the interest rate applicable to such Loans shall be determined by substituting the Alternate Base Rate (which shall be determined without reference to any portion thereof that is calculated based on the LIBOR Rate) for the LIBOR Rate until such time as the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist.

(b) *Illegality of Loans Bearing Interest at the LIBOR Rate*. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with the Agent) that the maintaining or continuation of all or any of its Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), then such Lender shall be an "**Affected Lender**" and it shall on that day give notice (by electronic communication) to the Borrower and the Agent of such determination (which notice the Agent shall promptly transmit to each other Lender). Thereafter the Affected Lender's obligation to maintain its outstanding Loans bearing interest at the LIBOR Rate (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law and the interest rate applicable to such Affected Loans shall be determined by substituting the Alternate Base Rate (which shall be determined without reference to any portion thereof that is calculated based on the LIBOR Rate) for the LIBOR Rate, *provided* that the Affected Lender shall make commercially reasonable efforts to assign the Affected Loans according to *Section 10.4*.

(c) *LIBOR Successor Rate*. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the LIBOR Rate for any requested Interest Period, including, without limitation, because the LIBOR screen rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR screen rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the LIBOR screen rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "**Scheduled Unavailability Date**");

then, reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent (at the direction of the Required Lenders) shall amend this Agreement to replace the LIBOR Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any then prevailing convention for similar credit facilities in the United States for such alternative benchmarks (any such proposed rate, a "**LIBOR Successor Rate**"), together with any proposed LIBOR Successor Rate Conforming Changes. If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Loans

accruing interest based on the LIBOR Rate shall be suspended and (y) following the expiration of the Interest Period then in effect with respect to any Loans outstanding at such time accruing interest at the LIBOR Rate, the interest rate applicable to such Loans shall be determined by substituting the Alternate Base Rate (which shall be determined without reference to any portion thereof that is calculated based on the LIBOR Rate) for the LIBOR Rate.

Section 2.16 Agency and Administration Fees. The Borrower agrees to pay to the Agent and Oaktree Capital Management, L.P. the fees and expenses in accordance with the applicable Fee Letter.

Section 2.17. Prepayment Premium and Exit Fee; Acceleration. Notwithstanding anything in this Agreement to the contrary, if the Obligations are accelerated in accordance herewith for any reason or otherwise become due in accordance herewith prior to their original maturity date, including pursuant to *Section 2.6*, *Section 2.7* or *Article VII*, and including because of default, sale or encumbrance (including that by operation of law or otherwise and including as a result of the commencement of any proceeding under any Debtor Relief Law), the Prepayment Premium and Exit Fee shall also automatically be due and payable as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits, losses and other damages as a result thereof. Any Prepayment Premium or Exit Fee payable pursuant to this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration or prepayment and each Loan Party agrees that such Prepayment Premium or Exit Fee is reasonable under the circumstances currently existing. The Prepayment Premium and Exit Fee shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT PREMIUM OR EXIT FEE IN CONNECTION WITH ANY ACCELERATION, IN EACH CASE, TO THE MAXIMUM EXTENT SUCH WAIVER IS PERMITTED UNDER APPLICABLE LAW. The Loan Parties expressly agree that (i) the Prepayment Premium and Exit Fee are each reasonable and each is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Premium and Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium and Exit Fee, including the entry into Amendment No. 1 and Amendment No. 2 and the agreement by the Lenders therein to fund the Early Delayed Draw Term Loans, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this *Section 2.17*, (v) their agreement to pay the Prepayment Premium and Exit Fee is a material inducement to the Lenders to make the Loans, and (vi) the Prepayment Premium and Exit Fee represent a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of

such event.

Section 2.18 Unused Commitment Fee. The Borrower agrees to pay to the Agent for the account of each Lender a commitment fee for the period from and including (x) the Closing Date to (y~~) the earlier of (i) the Delayed Draw Funding Date or (ii~~) the Delayed Draw Termination Date, in an amount equal to 0.75% per annum on the average daily amount of the Delayed Draw Term Loan Commitment of such Lender, payable quarterly in arrears on the last Business Day of each quarter beginning with the quarter ending December 31, 2018.

Section 2.19 Exit Fee. Upon any payment or prepayment of all or a portion of the Term Loans hereunder, whether voluntary or involuntary, prior to, on or after the Maturity Date or following the acceleration of the Obligations hereunder, including as a result of the commencement of any proceeding under any Debtor Relief Law, the Borrower shall pay to each of the Lenders for its own account a fee (the "**Exit Fee**") equal to 1.25% of the principal amount of such Lender's Term Loans so paid or prepaid. Such Exit Fee shall be earned, due and payable immediately upon any such payment or prepayment, and shall be in addition to any accrued and unpaid interest, reimbursement obligations, Prepayment Premium or other amounts payable in connection therewith.

ARTICLE III
CONDITIONS PRECEDENT

Section 3.1 Closing Date. The obligation of the Lenders to make the Closing Date Term Loans on the Closing Date is subject to the satisfaction (or waiver in accordance with *Section 10.2)* of the following conditions, as determined by the Agent and the Lenders:

(a) *Funding Notice*. The Agent shall have received a completed Funding Notice, duly executed by the Borrower.

(b) *Loan Documents*. The Agent shall have received each Loan Document required to be executed by the appropriate Loan Party on the Closing Date and delivered by each applicable Loan Party in such number as reasonably requested by the Agent (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (b) on the Closing Date, with signed originals to be delivered promptly thereafter) and such Loan Documents shall be in form and substance satisfactory to the Loan Parties, the Agent and the Lenders and their respective counsels.

(c) *Organizational Documents; Incumbency*. The Agent shall have received, in form and substance reasonably satisfactory to the Agent and the Lenders: (i) a copy of each Organizational Document of each Loan Party (and, to the extent applicable, certified by the appropriate Governmental Authority as of the Closing Date or a recent date prior thereto), certified as of the Closing Date by a representative of such Loan Party as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Loan Party executing the Loan Documents to which it is a party; (iii) resolutions of the board of directors or similar governing body of each Loan Party approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to

which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by a representative of such Loan Party as being in full force and effect without modification or amendment; (iv) to the extent applicable, a good standing or other certificate from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation, each dated a recent date prior to the Closing Date; and (v) a completed IRS Form W-9, duly executed by an Authorized Officer of the Borrower.

(d) *Closing Date Certificate*. The Agent shall have received a Closing Date Certificate, dated as of the Closing Date, and signed by an Authorized Officer of the Borrower.

(e) *Governmental Authorizations and Consents*. Each Loan Party shall have obtained all material necessary Governmental Authorizations and all consents of other Persons, in each case that are necessary in connection with the transactions contemplated by this Agreement, and each of the foregoing shall be in full force and effect, final and non-appealable and not subject to further review, and in form and substance reasonably satisfactory to the Agent and the Lenders.

(f) *Fees and Expenses*. The Agent shall have received payment in full of (i) all fees required to be paid on the Closing Date under the Fee Letters, and (ii) expenses invoiced and due to the Agent (including the reasonable fees and expenses due of their advisors and legal counsel, including Sullivan & Cromwell LLP, as counsel to the Agent) in connection with this Agreement and the other Loan Documents. For the avoidance of doubt, such fees and expenses may be paid and discharged with the proceeds of the Term Loans.

(g) *Representations and Warranties*. The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to clause (b) shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(h) *Solvency Certificate*. On the Closing Date, the Agent shall have received a Solvency Certificate from the Borrower dated as of the Closing Date.

(i) *Perfection of Collateral*. On the Closing Date, the Agent shall have received: (i) all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Collateral Documents and evidence reasonably satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Collateral Documents to be effected, given or made in accordance with the terms of the Collateral Documents in order to establish a valid and perfected first priority security interest in the Collateral and (ii) UCC lien searches (or foreign equivalent) with respect to each Loan Party reasonably satisfactory to the Lenders.

(j) *Opinions of Counsel to Loan Parties*. The Agent and its counsel shall have received executed copies of the favorable written opinions of counsel to the Loan Parties as to such matters as the Agent and the Lenders may request, including with respect to the creation and perfection of the security interests, dated as of the Closing Date, and otherwise in form and substance reasonably satisfactory to the Agent and the Lenders.

(k) *Due Diligence*. The Lenders shall have completed to their satisfaction all financial and legal due diligence with respect to the Loan Parties.

(l) *Material Adverse Effect*. Since December 31, 2017, no event, circumstance or change shall have occurred that has caused or would reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect, both before and after giving effect to the Term Loans to be made on the Closing Date.

(m) *No Default*. No event shall have occurred or be continuing or would result from the making of the Term Loans that would constitute a Default or Event of Default.

(n) *Beneficial Ownership*. To the extent requested by any Lender or the Agent, the Borrower shall have provided to such Lender and the Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

Section 3.2 ~~Delayed Draw Term Loans~~Reserved. ~~The obligation of the Lenders to make the Delayed Draw Term Loans on the Delayed Draw Funding Date is subject to the satisfaction (or waiver in accordance with *Section 2.1(f)*) of the following conditions, as determined by the Agent:~~

~~(a) *Representations and Warranties*. The representations and warranties contained in this Agreement and in the other Loan Documents shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Delayed Draw Funding Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.~~

~~(b) *No Default*. No event shall have occurred and be continuing or would result from the making of the Delayed Draw Term Loans that would constitute a Default or Event of Default.~~

~~(c) *Delayed Draw Eligibility Event*. The Delayed Draw Eligibility Event shall have occurred and the Borrower shall have delivered the Delayed Draw Notice.~~

Section 3.3 Early Delayed Draw Term Loans. The obligation of the Lenders to make the Early Delayed Draw Term Loans on the Early Delayed Draw Funding Date is subject to the satisfaction (or waiver in accordance with *Section 2.1(i))* of the following conditions, as determined by the Agent:

(a) *Representations and Warranties*. The representations and warranties contained in this Agreement and in the other Loan Documents shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Early Delayed Draw Funding Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

(b) *No Default*. No event shall have occurred and be continuing or would result from the making of the Early Delayed Draw Term Loans that would constitute a Default or Event of Default.

(c) The funding date of the Early Delayed Draw Term Loans shall be no later than May 3, 2019.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to make the Loans to be made pursuant to this Agreement and to induce the Agent to enter into this Agreement, each of the Loan Parties represents and warrants to each Lender and the Agent that the following statements are true and correct ~~on and as of the Closing Date, the date of delivery of the Delayed Draw Notice, the Delayed Draw Funding Date and the Early Delayed Draw Funding Date~~:

Section 4.1 Organization; Requisite Power and Authority; Qualification. Each Loan Party (i) is duly organized, validly existing and, if applicable in the jurisdiction of organization, in good standing under the laws of its jurisdiction of organization, (ii) has all requisite organizational power and authority to own and operate its properties, to carry on its business as now conducted and as currently proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and (iii) except where the failure to do so, individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect, is qualified to do business and, where applicable, is in good standing, in every jurisdiction where such qualification is required.

Section 4.2 Due Authorization. The execution, delivery and performance of the Loan Documents to which such Loan Party is a party have been duly authorized by all necessary organization action on the part of such Loan Party.

Section 4.3 Due Execution. Each Loan Party has duly executed and delivered each Loan Document to which it is a party.

Section 4.4 Enforceability. Each Loan Document to which such Loan Party is a party is the valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with the respective terms of such Loan Document, subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally, and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 4.5 No Conflict. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate any provision of (i) any law or any governmental rule or regulation binding upon and applicable to such Loan Party, (ii) any of the Organizational Documents of such Loan Party, or (iii) any order, judgment or decree of any Governmental Authority binding on such Loan Party; (b) result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of such Loan Party; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of such Loan Party, other than any Liens created under any of the Loan Documents; or (d) require any approval of stockholders, members, partners or similar owners of any Equity Interests of such Loan Party, or any approval or consent of any Person under any Contractual Obligation of such Loan Party, except for (x) such approvals or consents that have been obtained on or before the Closing Date, (y) in the case of clause (d) above, any such approvals or consents the failure of which to obtain will not result in a Material Adverse Effect, or (z) in the case of clauses (a)(i), (a)(iii) or (b) above, any such violations or breaches which will not result in a Material Adverse Effect.

Section 4.6 Governmental Approvals. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation by each Loan Party of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for filings and recordings in connection with the perfection of Liens in the Collateral that are to be made, or otherwise delivered to the Agent for filing and/or recordation to the extent required by the Collateral Agreement, as of the Closing Date.

Section 4.7 Compliance with Law. Each Loan Party and its Subsidiaries is in compliance with (i) all laws, regulations, guidelines binding upon it and orders of any Governmental Authority applicable to it, its operations or its property and (ii) all Contractual Obligations applicable to such Loan Party, in each case except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to cause a Material Adverse Effect.

Section 4.8 Investment Company Act. No Loan Party is subject to regulation under the Investment Company Act of 1940 or under any other federal, provincial or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all

or any portion of the Obligations unenforceable. No Loan Party is a “registered investment company” or a company “controlled” by a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

Section 4.9 Financial Statements.

(a) The audited consolidated balance sheet and statements of income, stockholders equity and cash flows of the Borrower and its Subsidiaries (including the Scilex Subsidiary) previously delivered by the Borrower to the Agent (or otherwise made available on the EDGAR Website maintained by the U.S. Securities and Exchange Commission) for the Fiscal Year ended December 31, 2017, have been prepared in conformity with GAAP and fairly present in all material respects the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for the periods then ended.

(b) The unaudited consolidated balance sheet and statements of income, stockholders equity and cash flows of the Borrower and its Subsidiaries (including the Scilex Subsidiary) previously delivered by the Borrower to the Agent (or otherwise made available on the EDGAR Website maintained by the U.S. Securities and Exchange Commission) for the fiscal quarters ended March 31, 2018 and June 30, 2018 have been prepared in conformity with GAAP and fairly present in all material respects the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended (except for the absence of footnote disclosure and year-end audit adjustments).

(c) Since December 31, 2017, the Loan Parties have not incurred any material contingent liability that would be required to be disclosed on its financial statements in accordance with GAAP except to the extent disclosed in filings with the U.S. Securities and Exchange Commission or incurred in the Ordinary Course.

Section 4.10 No Material Adverse Change. Since December 31, 2017, no event, circumstance or change has occurred that has caused or would reasonably be expected to cause, in any case or in the aggregate, a Material Adverse Effect.

Section 4.11 Payment of Taxes. Except as otherwise permitted under *Section 5.3*, all material tax returns and reports of such Loan Party and its Subsidiaries required to be filed by it have been timely filed (taking into account any permitted extensions), and all material taxes shown on such tax returns to be due and payable, and all other material taxes, assessments, fees and other governmental charges imposed upon such Loan Party and upon its properties, assets, income, businesses and franchises which are due and payable, have been paid when due and payable (other than those being actively contested by such Loan Party in good faith and by appropriate proceedings and with respect to which reserves or other appropriate provisions, if any, as required in conformity with GAAP have been made or provided therefor) and, to the knowledge of such Loan Party, there is no proposed tax assessment or claim being assessed

against such Loan Party or its Subsidiaries with respect to any such taxes, assessments, fees and other governmental charges, except those that in the aggregate would not reasonably be expected to have a Material Adverse Effect.

Section 4.12 Adverse Proceedings and Claims. Except as set forth on *Schedule 4.12*, there are no pending Adverse Proceedings and, to the knowledge of such Loan Party, no Person has asserted against such Loan Party or any of its Subsidiaries any claim that would constitute an Adverse Proceeding which would reasonably be expected to cause a Material Adverse Effect.

Section 4.13 Employee and Pension Matters.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other federal or state law or other applicable law, (ii) each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and (iii) the Loan Parties and each ERISA Affiliate, as applicable, has made all required contributions to any Plan subject to Section 412 or 430 of the Code or Section 302 or 303 of ERISA or other applicable laws, and no application for a funding waiver or an extension of any amortization period (pursuant to Section 412 of the Code, or otherwise) has been made with respect to any Plan.

(b) Except as could not reasonably be expected to have Material Adverse Effect, (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any material liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); and (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any material liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multi-employer Plan.

(c) Provided the proceeds used to fund the Loan do not constitute plan assets, the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Term Loans.

Section 4.14 Solvency. The Loan Parties, on a consolidated basis, are Solvent (as determined after taking into account this Agreement and any borrowings, as applicable, ~~made on the Closing Date, the Delayed Draw Funding Date or the Early Delayed Draw Funding Date~~ made hereunder).

Section 4.15 Material Agreements. *Schedule 4.15* sets forth an accurate and complete list of all Material Agreements of such Loan Party and its Subsidiaries as of the Closing Date, all of which are valid, binding, subsisting and in full force and effect. Except as set forth on *Schedule 4.15*, (a) none of the Loan Parties, any of their Subsidiaries or any

counterparty is in default of the performance or observance of any of the material obligations, covenants or conditions contained in any Material Agreement, (b) to the knowledge of such Loan Party, no event or circumstance exists that would prevent the counterparty to any Material Agreement from performing any of its material obligations, covenants or conditions contained in any Material Agreement to which it is a party and (c) such Loan Party has not received or provided any notice of intention to terminate any Material Agreement in whole or in part.

Section 4.16 Ownership and Investment.

(a) *Loan Parties*. The outstanding Equity Interests of such Loan Party have been duly authorized and validly issued and, to the extent applicable, are fully paid and non-assessable. *Schedule 4.16(a)* correctly sets forth the jurisdiction of organization of such Loan Party and the ownership interests of the issued and outstanding Equity Interests of such Loan Party as of the Closing Date. Except as set forth on *Schedule 4.16(a)*, as of the Closing Date there is no existing option, warrant, call, right, commitment or other agreement to which such Loan Party is a party requiring, and there is no membership interest or other Equity Interests of such Loan Party outstanding which upon conversion or exchange would require, the issuance by such Loan Party of any additional membership interests or other Equity Interests of such Loan Party or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of such Loan Party.

(b) *Subsidiaries*. *Schedule 4.16(b)* correctly sets forth the jurisdiction of organization of such Loan Party's direct Subsidiaries and the ownership interests of the issued and outstanding Equity Interests of such Subsidiaries as of the Closing Date.

(c) *Specified Assets*. One or more of the Loan Parties owns all right, title and interest in the Specified Assets (other than (i) the assets comprising the Virttu Biologics business, which are owned by Virttu Biologics Limited, a wholly-owned Foreign Subsidiary of the Loan Parties and (ii) certain assets comprising the Levena Biopharma business, which are owned directly or indirectly by Levena (Suzhou) Biopharma Co. Ltd, a wholly-owned Foreign Subsidiary of the Loan Parties), subject to Liens expressly permitted by Agreement.

Section 4.17 Intellectual Property.

(a) *Schedule of Loan Party Intellectual Property*. *Schedule 4.17(a)* sets forth a complete and accurate list, as of the Closing Date, of all (i) Loan Party Intellectual Property consisting of Patents, Copyrights and Trademarks owned by any Loan Party and (ii) any material Copyrights licensed exclusively to any Loan Party, in each case, that is issued, registered or subject to a pending application, including, in each case, the owner, applicable registration or application number and jurisdiction. All Material Loan Party Intellectual Property that is registered is subsisting and, to the knowledge of each Loan Party, valid and enforceable, and there is no pending or, to such Loan Party's knowledge, threatened Dispute challenging in writing the ownership, validity or enforceability of such Material Loan Party Intellectual Property.

(b) *Title to Loan Party Intellectual Property*. Except as otherwise set forth in Schedule 4.17(a), the Loan Parties or one or more of their Subsidiaries are the exclusive owners of all right, title and interest in and to the Material Loan Party Intellectual Property, free and clear of any Liens except for Liens not prohibited by *Section 6.2*.

(c) *Non-Infringement*. Except as has not resulted in and would not reasonably be expected to result in a Material Adverse Effect, the conduct of the businesses of the Borrower and its Subsidiaries have not within the past three (3) years infringed, misappropriated or otherwise violated any Intellectual Property rights of any other Person. To the knowledge of such Loan Party, no Person is infringing, misappropriating or otherwise violating any Material Loan Party Intellectual Property in a manner that has resulted in, or is reasonably expected to result in, a Material Adverse Effect.

(d) *IP Sufficiency*. Except as would not reasonably be expected to result in a Material Adverse Effect, the Borrower and its Subsidiaries own or have a valid and enforceable license or other right to use all material Intellectual Property used in or necessary for the conduct of their respective businesses as conducted as of the date hereof.

(e) *Employee IP Assignments*. All current and former employees and contractors of the Borrower and each of its Subsidiaries that are involved in the development of material Intellectual Property on behalf of the Borrower or its Subsidiaries have executed written confidentiality and invention assignment agreements pursuant to which such employee or contractor, to the extent permitted by applicable law, presently assigns and agrees to assign to the Borrower or its Subsidiaries all right, title and interest in and to such material Intellectual Property, and agrees to keep confidential information and trade secrets of the Borrower and its Subsidiaries confidential.

Section 4.18 Real Property. *Schedule 4.18* correctly sets forth all real property that is owned or leased by the Loan Parties as of the Closing Date, indicating in each case whether the respective property is owned or leased, the identity of the owner or landlord thereof and lessee or sublessee thereof (if applicable) and the address of the respective property.

Section 4.19 Existing Debt. *Schedule 4.19* correctly sets forth, as of the Closing Date (i) all Indebtedness for borrowed money of each Loan Party and its Subsidiaries, including any commitment for the extension of such Indebtedness to such Loan Party or the Guarantee by such Loan Party or any of its Subsidiaries of any such Indebtedness of any other Person, and (ii) the aggregate principal or face amount outstanding or that may become outstanding under each such arrangement, excluding in the case of each of clause (i) and (ii) this Agreement and the Loans.

Section 4.20 Regulatory Approvals and Related Submissions and Materials.

(a) *Schedule 4.20(a)* correctly sets forth all of the material Regulatory Approvals relating to the Products of any Loan Party as of the Closing Date.

(b) There has been no statement in the written or oral communications received by such Loan Party, or to the knowledge of such Loan Party, by any manufacturer or distributor of any Product or any licensee of any Loan Party under any License Agreement, from any Regulatory Authority in their respective jurisdictions that would indicate that the Regulatory Authority (i) was not likely to approve any Loan Party's applications made to any Regulatory Authority with respect to any of the Products or any Material Agreement or (ii) is likely to revise or revoke any current approval granted by any Regulatory Authority with respect to any of the Products or any Material Agreement in connection with a Product.

(c) Each Loan Party is compliant in all material respects with all Regulatory Approvals and all statutory and regulatory obligations applicable under its currently held marketing authorizations and requirements with respect to each Product wherever such Product is now being licensed, sold, investigated in clinical studies or in preclinical studies.

Section 4.21 Title to Property. Each Loan Party and its Subsidiaries has good and marketable title to (or, in the case of leased real property, valid leasehold interests in) all of its real and personal property, whether tangible or intangible, material to the Loan Parties and their Subsidiaries business, taken as a whole, except for Liens not prohibited by *Section 6.2*.

Section 4.22 Insurance. All policies of insurance maintained by or on behalf of such Loan Party are in full force and effect and are of a nature and provide such coverage as is customarily carried by businesses of the size and character of such Loan Party. *Schedule 4.21* correctly sets forth a description of all policies of insurance maintained by the Loan Parties in the United States as of the Closing Date.

Section 4.23 Labor Matters. As of the Closing Date, there are no collective bargaining agreements covering employees of such Loan Party or any of its Subsidiaries.

Section 4.24 Environmental Matters. Except with respect to any matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, no Loan Party nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which such Loan Party or any Subsidiary has assumed or undertaken responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other Environmental Liability.

Section 4.25 Anti-Terrorism Laws.

(a) None of the Loan Parties or any of their Subsidiaries or, to the knowledge of such Loan Party, any Affiliates of such Loan Party, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) (i) None of the Loan Parties or their Subsidiaries nor (ii) to the knowledge of such Loan Party, any Affiliates of such Loan Party or their respective agents acting or benefiting in any capacity in connection with the Loans or other transactions hereunder, is a Sanctioned Person.

(c) (i) None of the Loan Parties or any of their Subsidiaries nor (ii) to the knowledge of such Loan Party, any of their agents acting in any capacity in connection with the Loans or other transactions hereunder (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person or in any Sanctioned Country, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions.

Section 4.26 Completeness of Disclosure. No document, certificate or other written information, including, information contained in the presentations made to the Lenders, furnished to the Lenders by or on behalf of the Loan Parties and their Subsidiaries for use in connection with the transactions contemplated by this Agreement, but excluding any financial projections that may be included therein or that have been furnished to the Lenders, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and *pro forma* financial information contained in such materials are based upon good faith estimates and assumptions believed by the Loan Parties to be reasonable at the time made, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ materially from the projected results. There are no facts known to any Loan Party that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and that have not been disclosed in writing to the Lenders for use in connection with the transactions contemplated by this Agreement or otherwise disclosed in filings with the U.S. Securities and Exchange Commission prior to the date hereof.

Section 4.27 No Default. No Event of Default or Default has occurred and is continuing.

Section 4.28 Broker Fees. No Loan Party has engaged or dealt with any broker or arranger, other than Morgan Stanley & Co. LLC, in connection with this Agreement and the Loans, and there are no brokerage commissions or fees payable in connection with the Loans to be provided to the Borrower under this Agreement to any Person other than Morgan Stanley & Co. LLC and pursuant to the Fee Letters.

ARTICLE V
AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that until the Commitments have terminated, the Obligations have been indefeasibly paid in full in cash, including the Prepayment Premium, if applicable, and the Exit Fee but excluding contingent indemnification obligations (other than those with respect to which the Agent or any Lender has then given notice to the

Borrower) and this Agreement has terminated in accordance with *Section 10.5*, each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this *Article V*:

Section 5.1 Financial Statements and Other Reports. The Loan Parties shall deliver to the Agent:

(a) *Quarterly Financial Statements*. Within 45 days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter) of each Fiscal Year (or if later, the end of any extension period granted to the Borrower pursuant to any extension in connection with its Quarterly Report on Form 10-Q for such Fiscal Quarter made in compliance with Rule 12b-25 of the Exchange Act, which such extension shall not in the aggregate exceed five (5) days):

(i) consolidated balance sheets of the Borrower and its Subsidiaries (including the Scilex Subsidiary) as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries (including the Scilex Subsidiary) for the portion of the Borrower's Fiscal Year then elapsed; and

(ii) consolidated balance sheets of the Scilex Subsidiary as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of the Scilex Subsidiary for the portion of the Borrower's Fiscal Year then elapsed;

in the case of each of clauses (i) and (ii), setting forth in comparative form the corresponding figures for the corresponding Fiscal Quarter and period in the previous Fiscal Year, together with a Financial Officer Certification with respect thereto.

(b) *Annual Audited Financial Statements*. Within 90 days after the end of each Fiscal Year (or if later, the end of any extension period granted to the Borrower pursuant to any extension in connection with its Annual Report on Form 10-K for such Fiscal Year made in compliance with Rule 12b-25 of the Exchange Act, which such extension shall not in the aggregate exceed fifteen (15) days):

(i) (x) the audited consolidated balance sheets of the Borrower and its Subsidiaries (including the Scilex Subsidiary) as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries (including the Scilex Subsidiary) for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, together with a Financial Officer Certification and (y) with respect to such consolidated financial statements a report thereon of Deloitte & Touche LLP or other independent registered public accounting firm of recognized international standing selected by the Borrower, which report shall be unqualified, and shall state that such consolidated financial statements fairly present the consolidated financial position of the Borrower and its Subsidiaries (including the Scilex Subsidiary) as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as

otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards, together with a written statement by such independent registered public accounting firm stating that nothing has come to their attention that causes them to believe that the information contained in any Compliance Certificate is not correct or that the matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof; *provided*, however, that any such report shall not be considered qualified due to the inclusion of an emphasis of matter paragraph in the audit opinion based on recurring losses from operations and working capital deficiencies similar in type disclosed in the Borrower's audited financial statements for the 2017 Fiscal Year and if the Borrower delivers to the Agent within three Business Days after the delivery of the applicable financial statements a Solvency Certificate attesting to the solvency as of such date of the Borrower; and

(ii) (x) the audited consolidated balance sheets of the Scilex Subsidiary as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of the Scilex Subsidiary for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, together with a Financial Officer Certification and (y) with respect to such consolidated financial statements a report thereon of Deloitte & Touche LLP or other independent registered public accounting firm of recognized international standing selected by the Borrower, which report shall be unqualified, and shall state that such consolidated financial statements fairly present the consolidated financial position of the Scilex Subsidiary as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(c) *Liquidity Information*. Within five (5) Business Days after receipt of a written request from any Lender or the Agent, the Borrower shall provide to such Lender or the Agent copies of bank statements and balance, together with any additional information reasonably requested by such Lender or the Agent evidencing the Borrower's maintenance of the Minimum Liquidity Amount.

(d) *Compliance Certificate*. Together with each delivery of financial information (and in any event no later than the delivery date required thereby) pursuant to *Sections 5.1(a)* and *5.1(b)*, a duly executed and completed Compliance Certificate, attaching such required financial information required pursuant to *Sections 5.1(a)* or *5.1(b)* (as applicable).

(e) *Financial Covenant.* Together with each delivery of financial information pursuant to *Sections 5.1(a)* or *5.1(b)* (as applicable), the Borrower shall deliver to the Agent a compliance certificate substantially in the form of Exhibit I, executed by the chief financial officer, principal financial officer or principal accounting officer of the Borrower, and such other

evidence reasonably requested by any Lender, confirming the Borrower's compliance with the covenant set forth in *Section 6.15*.

(f) *Annual Budget*. As soon as available, and in any event within sixty (60) days after the end of each Fiscal Year, a detailed consolidated budget for the following Fiscal Year (including a projected consolidated balance sheet of the Borrower and its Subsidiaries (including the Scilex Subsidiary) as of the end of the following Fiscal Year and the related consolidated statements of projected cash flow and projected income and a summary of the material underlying assumptions applicable thereto, and during the course of such Fiscal Year any updates thereto prepared by the Borrower or any of its Subsidiaries if, and to the extent, delivered to the Borrower's board of directors). Such budget shall in each case be accompanied by a certificate of an Authorized Officer stating that such budget has been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such budget, it being understood that actual results may vary from such budget and that such variations may be material.

(g) *Notice of Default, Event of Default or Material Adverse Effect*. Promptly upon (i) the occurrence of any Default or Event of Default or receipt by any Loan Party or any of its Subsidiaries of notice with respect thereto or (ii) the occurrence of any event or change that has caused (or would reasonably be expected to cause), in any case or in the aggregate, a Material Adverse Effect, a certificate such Loan Party's Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition, and what action such Loan Party has taken, is taking and proposes to take with respect thereto.

(h) *Notice of Adverse Proceeding*. Promptly upon any Loan Party obtaining knowledge of (i) the institution of, or threat in writing of, any Adverse Proceeding not previously disclosed in writing by such Loan Party to the Lenders, or (ii) any ~~material~~ development in any Adverse Proceeding that, in the case of either (i) or (ii), would be reasonably expected to have a Material Adverse Effect, such Loan Party shall provide written notice thereof to the Agent.

(i) *Environmental Notifications*. Promptly following receipt or submission thereof, copies of all environmental reports, filings or notifications submitted to a Governmental Authority or third party, whether prepared by personnel of any Loan Party or by independent consultants, Governmental Authorities or any other Persons, with respect to environmental matters arising out of the operations of the Borrower or any Subsidiary or at any Facility that would be reasonably expected to have a Material Adverse Effect or with respect to any Environmental Claims that would be reasonably expected to have a Material Adverse Effect.

(j) *Information Regarding Collateral*. (i) At least 30 days prior to any such change, written notice of (A) any change in any Loan Party's name, (B) any change in the location of any Loan Party's chief executive office or principal place of business, (C) any change in any Loan Party's jurisdiction of organization or "location" (determined as prescribed in New York UCC Section 9-307) or type of organizational structure, (D) any change in any Loan Party's taxpayer identification number or company registration number or similar identifying

designation assigned by any applicable Governmental Authority or (E) any damage or destruction of any material portion of the Collateral, and (ii) promptly (and in any case within two Business Days) after the effectiveness thereof certified organizational documents reflecting any of the changes described in (i) above.

(k) *ERISA Event*. Promptly upon any Authorized Officer of a Loan Party obtaining knowledge of the occurrence of any ERISA Event that would reasonably be likely to cause a Material Adverse Effect, such Loan Party shall provide written notice specifying the nature thereof, what action such Loan Party or its ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto.

(l) *Other Information*. (i) Promptly upon their becoming available, copies of (A) all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower to its security holders and (B) all regular and periodic reports and all registration statements and prospectuses, if any, filed by the Borrower with any securities exchange and (ii) such other information and data with respect to the Borrower or any of its Subsidiaries (including the Collateral) as from time to time may be reasonably requested by the Agent.

(m) *Weekly Cash Report*. On Tuesday of each week, commencing with December 10, a written report setting forth the cash balances of the Borrower and its Subsidiaries as of close of business on the immediately preceding Friday, including a break-down of the amounts included in the Minimum Liquidity Amount and any other cash balances, along with such other information relating to the foregoing as the Agent may reasonably request; *provided* that in the event the Borrower makes an optional prepayment of at least $50,000,000 in principal amount of the Loans in accordance with *Section 2.6* on or prior to March 31, 2020, following such prepayment this *Section 5.1(m)* shall cease to be of any force or effect.

Any material to be delivered pursuant to Sections 5.1(a), (b), (h), (k) or (l) shall be deemed delivered hereunder upon posting thereof on the EDGAR Website (or any successor system thereto) maintained by the U.S. Securities and Exchange Commission.

Section 5.2 Existence. Except pursuant to a transaction expressly permitted under *Section 6.7*, each Loan Party shall, and shall cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (i) its existence and (ii) all rights, franchises, licenses and permits required by any Governmental Authority necessary to enable each Loan Party and each of its Subsidiaries to operate their respective businesses as now conducted and as currently contemplated to be conducted by them and to own or lease their respective properties other than, in the case of this clause (ii), where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 5.3 Payment of Taxes and Claims. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its profits, income, capital, capital gains, payroll businesses or franchises before any penalty or fine accrues thereon, and all material Taxes or claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have (or in the case of Taxes may) become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; *provided*, *however*, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings diligently conducted so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP, shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

Section 5.4 Maintenance of Properties. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties necessary in the business of such Loan Party and its Subsidiaries, and from time to time shall make or cause to be made all appropriate repairs, renewals and replacements thereof except where the failure in any individual case or in the aggregate to maintain such properties would not reasonably be expected to result in a Material Adverse Effect.

Section 5.5 Insurance. Each Loan Party (i) shall maintain, or cause to be maintained, with financially sound and reputable insurers, such insurance as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses and (ii) shall maintain all insurance required under the terms of any lease to which such Loan Party is a tenant or lessee the failure of which to maintain would reasonably be expected to cause a Material Adverse Effect. Within thirty (30) Business Days after the Closing Date (or such longer period of time agreed to by the Agent), each such policy of insurance shall (i) name the Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy (including business interruption, if any) contain a lender loss payable clause or endorsement naming the Agent, on behalf of the Secured Parties, as loss payee thereunder and providing for at least thirty (30) days' prior written notice to the Agent of any material modification or cancellation of such policy, and otherwise reasonably satisfactory in form and substance to the Agent. Notwithstanding the foregoing, in the event any proceeds of any insurance are received by the Agent or any Lender, except after the occurrence and during the continuance of an Event of Default, such Person shall, within one (1) Business Day after receipt thereof, deliver such proceeds in the form received to the Borrower or the applicable Loan Party to which such proceeds relate.

Section 5.6 Books and Records; Inspections. Each Loan Party shall, and shall cause each of its respective Subsidiaries to, keep books and records which accurately reflect its business affairs in all material respects in accordance with GAAP and each Loan Party shall, and shall cause each of its respective Subsidiaries to, permit any authorized representatives designated by the Agent to visit and inspect any of the properties of the Loan Party and their Subsidiaries no more than once per year, to inspect, copy and take extracts from their financial and accounting records, and to discuss their affairs, finances and accounts with their officers and independent registered public accounting firm, in person or by telephone call at the request of the Agent or its authorized representative during normal business hours upon at least ten (10) Business Days prior written notice; *provided* that no Loan Party shall be obligated pursuant to this *Section 5.6* to provide any information that it reasonably considers to be a trade secret or subject to attorney-client privilege or similar confidential information; *provided, further*, that following the occurrence and during the continuation of an Event of Default, the Agent will be entitled to conduct an unlimited number of such visitations or inspections, at the Borrower's expense, at reasonable times and upon reasonable notice.

Section 5.7 Compliance with Laws.

(a) *Environmental Compliance*. Each Loan Party shall comply, and shall cause each of its Subsidiaries to comply with all Environmental Laws in all material respects. If the Agent at any time has a reasonable basis to believe that there is any material violation by a Loan Party of any Environmental Law or the presence or release of any Hazardous Material which could result in material liability, each Loan Party shall, and shall cause each Subsidiary to, (i) cause the performance of such environmental audits and testing, and preparation of such environmental reports, at the Borrower's sole cost and expense, as the Agent may from time to time reasonably request with respect to any parcel of real property subject to a Collateral Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Agent and shall be in form and substance reasonably acceptable to the Agent, and (ii) permit the Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Agent shall reasonably deem appropriate.

(b) *General Compliance*. Each Loan Party shall comply, and shall cause each of its Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations, guidelines binding upon it and orders of any Governmental Authority the failure of which to comply with would reasonably be expected to cause a Material Adverse Effect. Within 60 days after the Closing Date, each Loan Party shall institute (if not already in effect) and thereafter maintain in effect and enforce policies and procedures reasonably designed to promote compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

Section 5.8 Additional Guarantors. In the event that any Person becomes a Domestic Subsidiary of the Borrower or any other Loan Party (other than the Scilex Subsidiary), the Borrower or such Loan Party shall within thirty (30) days after such Person becomes such a Domestic Subsidiary (or such later date as agreed to by the Agent):

(a) (i) cause such Subsidiary to become an Additional Guarantor by executing and delivering to the Agent a Joinder Agreement and, where applicable, all Collateral Documents

necessary to grant a first priority Lien in favor of the Agent in all assets owned or held by such Subsidiary of the type constituting Collateral, in each case in form and substance reasonably satisfactory to the Agent, (ii) cause itself or any of its other Subsidiaries that holds the Equity Interests of such Subsidiary to take any additional actions required by the Collateral Documents or hereunder necessary to grant a perfected first-priority Lien in such Equity Interests in favor of the Agent, including by, where applicable, delivering to the Agent originals of the certificates representing such Equity Interests, together with an original of an undated transfer power for each such certificates executed in blank by an Authorized Officer (and, where applicable, a power of attorney authorizing the Agent to transfer such Equity Interests) and any other instruments required by the Collateral Documents or hereunder necessary for the perfection of the Lien in such Equity Interests in favor of the Agent, and (iii) take all such other actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, opinions and certificates as are reasonably requested by the Agent to the extent similar to the ones described in *Section 3.1* clauses *(c)* and *(j)*; and

(b) send to the Agent written notice setting forth (i) the date on which such Person became a Subsidiary, and (ii) all of the data regarding such Person that was required to be set forth in the Disclosure Schedules with respect to the Loan Parties, and such written notice, upon approval by the Agent, shall be deemed to supplement the Disclosure Schedules for all purposes under this Agreement and the other Loan Documents.

Section 5.9 Further Assurances. At any time or from time to time upon the request of the Agent, each Loan Party shall, at its sole expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Agent may reasonably request in order to effect fully the purposes of the Loan Documents. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as the Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral in accordance with the requirements of the Loan Documents. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary (including any provision that would otherwise apply notwithstanding other provisions or that is the beneficiary of other overriding language), unless otherwise agreed to by the Borrower, (a) no more than 65.0% of the voting Equity Interests of any CFC or FSHCO that is, in each case, owned directly by a Loan Party shall be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Borrower, (b) no Equity Interest of any Subsidiary of a CFC or FSHCO shall be required to be directly or indirectly pledged or similarly hypothecated to guarantee or support any obligation of the Borrower (aggregating all arrangements that result in a direct or indirect pledge of such Equity Interests), (c) no CFC or FSHCO (or Subsidiary thereof) shall be required to guarantee or support any obligation of the Borrower, and (d) no security or similar interest shall be granted in the assets of any CFC or FSHCO (or Subsidiary thereof), which security or similar interest guarantees or supports any obligation of the Borrower.

Section 5.10 Employee and Pension Matters. The Loan Parties shall, and shall cause each of their Subsidiaries to: (i) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable federal or state law; (ii)

cause each applicable Pension Plan intended to be qualified under Section 401 of the Code to be so qualified; (iii) make all required contributions to any Plan when due; (iv) not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan; (v) not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA, and (vi) ensure that no Plan has an Unfunded Pension Liability, in each case of (i) through (vi), that would reasonably be expected to have a Material Adverse Effect.

Section 5.11 Other Collateral. Each Loan Party shall cause all of its owned real, personal and mixed property (including Equity Interests and Intercompany Indebtedness), other than Excluded Assets (as defined in the Collateral Agreement), to be subject at all times to a first priority perfected security interests in favor of the Agent for the benefit of the Secured Parties under the Collateral Documents to the extent required by the Collateral Agreement, free and clear of all Liens except for Liens not prohibited by *Section 6.2*.

Section 5.12 Intellectual Property.

(a) Subject to each Loan Party's reasonable business judgment, each Loan Party shall maintain each registration and diligently prosecute each application of any of its Material Loan Party Intellectual Property.

(b) Subject to each Loan Party's reasonable business judgment, each Loan Party shall defend all of its Material Loan Party Intellectual Property and Exclusively Licensed Material IP against infringement, misappropriation or other violation by any other Persons, and against any claims of invalidity or unenforceability, in each case where the failure to do so would reasonably be expected to have a Material Adverse Effect or otherwise result in the invalidity or unenforceability of any Material Loan Party Intellectual Property or Exclusively Licensed Material IP.

(c) Subject to each Loan Party's reasonable business judgment, the Borrower and each of its Subsidiaries shall protect the secrecy, confidentiality and value of its Material Loan Party Intellectual Property consisting of know-how, confidential or proprietary information or trade secrets.

(d) The Borrower and each of its Subsidiaries shall, to the extent permitted by applicable law, require all of their employees and consultants who are involved in the development of material Intellectual Property on behalf of the Borrower or its Subsidiaries to enter into written confidentiality and invention assignment agreements pursuant to which such employee or consultant presently assigns and agrees to assign to the Borrower or its Subsidiaries all right, title and interest in and to such material Intellectual Property.

Section 5.13 Debt Service Reserve Account; Blocked Liquidity Account.

(a) Subject to clauses (b), (d), (e) and (~~e~~f) below, the Borrower shall fund and maintain at all such times cash denominated in U.S. dollars in a debt service reserve account (the "**Debt Service Reserve Account**"), in an amount equal to at least the amount required to pay interest on the Loans for a period of twelve (12) months (the "**Debt Service Reserve Amount**");

provided that in the event the Borrower makes an optional prepayment of at least $50,000,000 in principal amount of the Loans in accordance with *Section 2.6* on or prior to March 31, 2020, notwithstanding anything to the contrary set forth herein, so long as no Default or Event of Default has occurred or is continuing or would result therefrom, any amounts on deposit in the Debt Service Reserve Account shall be released to Borrower upon such prepayment and, in addition, may be used to make such prepayment and if requested by the Borrower shall be released to the Borrower at the time of such prepayment in order to effectuate such prepayment and, in any event, the Agent agrees to provide any notice reasonably required by the financial institution at which the Debt Service Reserve Account is held to effectuate any such release.

(b) The Debt Service Reserve Amount shall ~~initially~~ be equal to $~~9,592,380.00~~10,680,000.00 as of the ~~Closing~~Amendment No. 2 Effective Date, and after the ~~Closing~~Amendment No. 2 Effective Date shall be recalculated on the first day of each Fiscal Quarter based on the LIBOR Rate for the Interest Period commencing on such date (assuming for purposes of such calculation that such rate shall remain in effect during the twelve (12) month period beginning on such date). Within 30 days after each such recalculation date and notice thereof from Agent to the Borrower, the Borrower shall deposit or cause to be deposited into the Debt Service Reserve Account such amounts in U.S. dollars as may be necessary to cause the balance of the Debt Service Reserve ~~Amount~~Account to be at least equal to the Debt Service Reserve Amount.

(c) Subject to clauses (d), (e) and (f) below, on and after the Amendment No. 2 Effective Date, the Borrower shall fund and maintain at all such times cash denominated in U.S. dollars in a blocked liquidity account (the "**Blocked Liquidity Account**"), in an amount equal to the Additional Reserve Amount. "**Additional Reserve Amount**" means, at any time (i) if the Step-Up Date has not occurred, $2,500,000 or (ii) at any time on or after the Step-Up Date, $20,000,000; *provided* that in the event the Borrower makes an optional prepayment of at least $50,000,000 in principal amount of the Loans in accordance with *Section 2.6* on or prior to March 31, 2020, then (i) the Additional Reserve Amount shall not exceed $10,000,000 and (ii) so long as no Default or Event of Default has occurred or is continuing or would result therefrom, any amounts on deposit in the Blocked Liquidity Account in excess of the Additional Reserve Amount shall be released to Borrower upon such prepayment and, in addition, may be used to make such prepayment and if requested by the Borrower shall be released to the Borrower at the time of such prepayment in order to effectuate such prepayment and, in any event, the Agent agrees to provide any notice reasonably required by the financial institution at which the Blocked Liquidity Account is held to effectuate any such release.

(d) ~~(c) The~~Subject to clause (f) below, the Borrower shall cause each of the Debt Service Reserve Account ~~to become~~and Blocked Liquidity Account to be subject at all times to a "blocked" account control agreement between the Borrower, the Agent and the applicable depositary bank in favor of the Agent ~~within the time period set forth in *Schedule 5.17* hereto and thereafter to remain subject to such control agreement at all times~~; provided that the Account Control Agreement, dated as of November 7, 2018, among the Borrower, the Agent and Bank of America, N.A., is in a form

satisfactory to the Agent. Agent agrees not to exercise any rights under such control agreement unless ~~an~~a Default or Event of Default has occurred and is continuing.

(e) In the event the Borrower provides notice in accordance with *Section 2.6* that Borrower intends to make an optional prepayment of the Loans in full in accordance with *Section 2.6*, notwithstanding anything to the contrary set forth herein, any amounts on deposit in the Debt Service Reserve Account or Blocked Liquidity Account may be used to make such prepayment and shall be released to the Borrower at the time of such prepayment in order to effectuate such prepayment and the Agent agrees to provide any notice or documentation required by the financial institution(s) at which the Debt Service Reserve Account and Blocked Liquidity Account are held to effectuate such release.

(f) Prior to the date that is 30 days after the Amendment No. 2 Effective Date (or such longer period as may be agreed to by the Agent in writing in its sole discretion), the Borrower may comply with its obligations hereunder with respect to the Blocked Liquidity Account by funding and maintaining the Additional Reserve Amount in the same deposit account as the Debt Service Reserve Amount (it being understood that such Additional Reserve Amount shall be in addition to the Debt Service Reserve Amount and shall not count towards the Debt Service Reserve Amount (and vice versa)), in which case such account shall be treated as both the Debt Service Reserve Account and the Blocked Liquidity Account, as applicable, for all purposes hereunder during such period. At all times after such date, the Borrower shall fund and maintain the Debt Service Reserve Account and Blocked Liquidity Account as separate deposit accounts in accordance with clause (c) above.

Section 5.14 Collateral Access Agreements. Each Loan Party that is a party to the leases located at (i) 9380 Judicial Drive, San Diego, CA, (ii) 8395 Camino Santa Fe, San Diego, CA and (iii) 4955 Directors Place, San Diego, CA 92121 (or any replacement or other facility which holds assets now or in the future held or of the type held at any of such facilities) shall use its commercially reasonable efforts to deliver to the Agent a collateral access agreement and acknowledgment and waiver of liens from the applicable lessor or similar party with respect to such location, in form and substance reasonably satisfactory to the Agent.

Section 5.15 Further Assurances. Each Loan Party shall execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents and recordings of Liens in stock registries), that may be required under any applicable law, or that the Agent may reasonably request, to establish and maintain the valid and perfected first priority security interest in the Collateral to be granted to the Agent, for the benefit of the Secured Parties, under the Collateral Documents, all at the expense of Borrower, and provide to the Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

Section 5.16 Right of First Refusal. In the event the Borrower or any other Loan Party intends, at any time while any Loans or Commitments remain outstanding, to obtain Indebtedness for borrowed money from one or more third-party financing sources in respect of which the Borrower will be an obligor, the Borrower shall comply with the ROFR Provisions with respect to such Indebtedness.

Section 5.17 Post-Closing Obligations. The Loan Parties shall, or shall cause their applicable Subsidiaries to, take each action set forth on *Schedule 5.17* within the time period set forth therein for the taking of such action (or such longer time period as the Agent may agree in its sole discretion) (it being understood and agreed that all representations, warranties and covenants set forth in the Loan Documents with respect to the taking of any such action are qualified by the non-completion of such action until such time as such action is completed or required to be completed in accordance with this *Section 5.17*).

Section 5.18 Additional Liquidity. From and after the Amendment No. 2 Effective Date and on or prior to […***…], the Borrower shall have […***…].

ARTICLE VI
NEGATIVE COVENANTS

Each Loan Party covenants and agrees, until the Commitments have terminated, the Obligations have been indefeasibly paid in full in cash, including the Prepayment Premium, if applicable, and the Exit Fee but excluding contingent indemnification obligations (other than those with respect to which the Agent or any Lender has then given notice to the Borrower) and this Agreement has terminated in accordance with *Section 10.5*, each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this *Article VI*:

Section 6.1 Indebtedness. Each Loan Party shall not, and shall not permit any of its Subsidiaries to directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Intercompany Indebtedness, *provided* that (i) any such Indebtedness owing by a Loan Party to a Person that is not a Loan Party shall be subordinated in right of payment to the Obligations and (ii) the aggregate principal amount of Indebtedness owing by Subsidiaries that are not Loan Parties to Loan Parties shall not exceed, together with the amount of Investment pursuant to *Section 6.6(d)(i)*, the Non-Loan Party Cap;

(c) Indebtedness in respect of cash management obligations, including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs, other similar arrangements and otherwise in connection with deposit accounts, and any guarantee obligations of any Loan Party and its Subsidiaries in connection therewith, in each case entered into in the Ordinary Course in an Arm's-Length Transaction;

(d) Indebtedness pursuant to Hedging Agreements not prohibited by *Section 6.14*;

(e) Capitalized Lease Obligations and purchase money Indebtedness in an aggregate principal amount not to exceed $10,000,000 at any time outstanding; provided that if such Indebtedness is incurred after the Amendment No. 2 Effective Date, no Default or Event of Default has occurred and is continuing on the date of the incurrence of such Indebtedness or would result from the incurrence of such Indebtedness;

(f) other unsecured Indebtedness in an aggregate principal amount not exceeding $375,000,000 at any time outstanding so long as (i) at the time of incurrence of such Indebtedness, no Default or Event of Default has occurred and is continuing, (ii) there are no obligors in respect of such Indebtedness other than the Loan Parties, (iii) neither the scheduled maturity date nor the weighted average life to maturity of such Indebtedness is earlier than 90 days after the Scheduled Maturity Date, (iv) such Indebtedness shall be subordinated in right of payment to the Obligations pursuant to a subordination agreement in form and substance acceptable to the Agent (provided that such subordination agreement shall permit the Loan Parties to make regularly scheduled interest payments in respect of such Indebtedness so long as no Default or Event of Default has occurred and is continuing), (v) the all-in-yield as determined by the Agent in its sole discretion applicable to such Indebtedness (whether in the form of interest, margin, original issue discount, upfront fees or otherwise) shall not exceed 15% per annum and (vi) the aggregate amount of interest and amortization payable in cash by the Borrower and its Subsidiaries pursuant to all Indebtedness incurred under this clause (f) on a *pro forma* basis shall not exceed $25,000,000 per annum;

(g) ~~unsecured promissory notes convertible into common shares of the Borrower in an aggregate principal amount not to exceed $38,000,000 at any time outstanding (the "**Convertible Notes**");~~ [reserved];

(h) Indebtedness of any Person that becomes a Subsidiary of any Loan Party after the date hereof pursuant to a Permitted Acquisition; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and was not incurred in contemplation of or in connection with such Person becoming a Subsidiary, ~~and~~ (ii) no other Loan Party or Subsidiary guarantees such Indebtedness and such Indebtedness is not otherwise recourse to any other Loan Party or Subsidiary, ~~and~~ (iii) the principal amount of Indebtedness permitted by this *Section 6.1(h)* shall not exceed in the aggregate $15,000,000 at any time outstanding; and (iv) if such Indebtedness is incurred after the Amendment No. 2 Effective Date, no Default or Event of Default has occurred and is continuing on the date of the incurrence of such Indebtedness or would result from the incurrence of such Indebtedness;

(i) (x) the Guarantee by any Loan Party of the Indebtedness or other obligations of any other Loan Party, to the extent such guarantor could have otherwise incurred such Indebtedness or other obligations directly as the primary obligor in accordance with this Agreement, and (y) the Guarantee by any Subsidiary that is not a Loan Party of the Indebtedness or other obligations of any other Subsidiary that is not a Loan Party;

(j) the incurrence by the Loan Parties of Indebtedness under an unsecured revolving credit facility in the aggregate principal amount outstanding at any one time not to exceed $25,000,000 on terms that have been consented to in writing by the Required Lenders; *provided* that after the Amendment No. 2 Effective Date, no such Indebtedness shall be incurred if at the time of incurrence thereof or after giving effect thereto any Default or Event of Default has occurred and is continuing;

(k) Indebtedness constituting reimbursement obligations with respect to letters of credit, bank guarantees or performance bonds issued in the Ordinary Course in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance or in connection with the maintenance of, or pursuant to the requirements of, environmental permits or licenses from Governmental Authorities;

(l) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course;

(m) Indebtedness of the Borrower consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the Ordinary Course;

(n) Indebtedness of the Borrower or its Subsidiaries consisting of obligations to make upfront payments, milestone payments, license payments and similar payments pursuant to any license agreement in an aggregate amount not to exceed $100,000,000 at any time; *provided* that (i) the amount of such Indebtedness incurred in connection with any single transaction or series of related transactions shall not exceed $50,000,000 and (ii) after the Amendment No. 2 Effective Date, no such Indebtedness shall be incurred if at the time of incurrence thereof or after giving effect thereto any Default or Event of Default has occurred and is continuing;

(o) Indebtedness of the Borrower pursuant to the Scilex Letter of Credit and the Scilex Indenture;

(p) Indebtedness of Subsidiaries that are not Loan Parties in an aggregate principal amount not to exceed $10,000,000 at any time outstanding; *provided* that no Loan Party shall be an obligor with respect to any such Indebtedness; *provided further* that after the Amendment No. 2 Effective Date, no such Indebtedness shall be incurred if at the time of incurrence thereof or after giving effect thereto any Default or Event of Default has occurred and is continuing; and

(q) other Indebtedness of the Loan Parties and its Subsidiaries outstanding on the Closing Date and set forth on *Schedule 6.1*, and any refinancing, renewal or extension thereof *provided* that (i) the principal amount of such Indebtedness is not increased at the time of such refinancing, renewal or replacement, except by the amount of any accrued but unpaid interest with respect to such Indebtedness at the time of such refinancing, renewal or replacement and

any expenses reasonably incurred in connection with such refinancing, renewal or replacement, (ii) any refinancing, renewal or replacement of any subordinated Indebtedness shall be (A) on subordination terms at least as favorable to the Lenders and (B) no more restrictive on the applicable Loan Party and its Subsidiaries than the subordinated Indebtedness being refinanced, renewed or extended, and (iii) the final maturity date and weighted average life to maturity of such refinancing, renewal or replacement shall not be prior to or shorter than that applicable to the Indebtedness refinanced thereby.

Notwithstanding the foregoing, in no event shall any Affiliate of any Loan Party (other than another Loan Party or wholly-owned Subsidiary thereof providing Indebtedness permitted pursuant to *Section 6.1(b)*) be permitted to be a lender to, or otherwise provide any Indebtedness to, any Loan Party or any of its Subsidiaries or directly, indirectly or beneficially hold any such Indebtedness.

Section 6.2 Liens. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any such Loan Party or any of its Subsidiaries, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any filing, recording, registration or other similar notice of any Lien with respect to any such property, asset, income or profits under any statute, except:

(a) Liens in favor of the Agent for the benefit of the Secured Parties granted pursuant to any Loan Document;

(b) Liens for Taxes, assessments or other governmental charges (i) not yet overdue or subject to penalties for nonpayment and in respect of which no enforcement proceedings have commenced or (ii) that are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(c) (i) statutory Liens of landlords, banks (including rights of set off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the Ordinary Course for sums (1) not yet overdue for a period of more than 60 days and in respect of which no enforcement proceedings have commenced or (2) being contested in good faith by appropriate proceedings, so long as reserves or other appropriate provisions, if any, required by GAAP shall have been made for any such contested amounts and (ii) customary encumbrances on deposit accounts of the Loan Parties or any of their Subsidiaries in favor of depositary banks in connection with cash management services in the Ordinary Course and not securing Indebtedness;

(d) Liens incurred in each case in the Ordinary Course in an Arm's-Length Transaction in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed

money or other Indebtedness) or deposits as security for contested taxes or import duties or for the payment of rent, so long as such is incurred in the Ordinary Course, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(f) any (i) interest or title of a lessor or sublessor under any lease of real estate, (ii) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to, or (iii) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in the preceding clause (ii), so long as the holder of such restriction or encumbrance agrees to recognize the rights of such lessee or sublessee under such lease;

(g) Liens in favor of lessors or sublessors securing operating leases and Liens in connection with the licensing and sublicensing of assets other than Intellectual Property, in each case, in the Ordinary Course and Liens permitted by ~~*Section*~~*Sections 6.7(e) or (k)*;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements or, for property located in foreign jurisdictions, the preparation and/or filing of functionally similar documents, relating solely to operating leases of personal property entered into in the Ordinary Course in an Arm's-Length Transaction;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) Liens securing Indebtedness permitted pursuant to *Section 6.1(e)*; *provided* that such Liens are created within 365 days after the acquisition of the property subject to such Liens and such Liens do not at any time encumber property other than the property financed by such Indebtedness;

(l) any Lien securing Indebtedness permitted pursuant to *Section 6.1(h)* existing on any property or asset prior to the acquisition thereof by a Loan Party or any Subsidiary thereof or existing on any property or assets of a Person that becomes a Subsidiary of any Loan Party pursuant to a Permitted Acquisition; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Loan Parties or any of the Subsidiaries and (iii) such Lien secures

only those obligations which it secured immediately prior to the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(m) Liens existing on the Closing Date and set forth on *Schedule 6.2* and any renewals, extensions and replacements thereof; *provided* that any renewal, extension or replacement of such Liens shall secure only those obligations secured by such Liens on the date hereof;

(n) Liens in favor of the Loan Parties;

(o) deposits made or other security provided to secure liabilities to insurance carriers under insurance in the Ordinary Course;

(p) leases or subleases of real property granted to others in the Ordinary Course which do not materially interfere with the ordinary conduct of the business of the Loan Parties and their Subsidiaries, as a whole, do not materially detract from the value of the property subject thereto and do not secure any Indebtedness;

(q) Liens securing judgments not constituting an Event of Default under *Section 7.1(j)*;

(r) Liens consisting of customary encumbrances on the Equity Interests in a Person which is not a Subsidiary of any Loan Party arising under any joint venture or similar agreement to the extent not prohibited under *Section 6.3* or *Section 6.5*, including customary rights of first refusal, "tag-along" and "drag-along" rights, transfer restrictions and put and call arrangements with respect to the Equity Interests of any such Person;

(s) Liens on motor vehicles of any of the Loan Parties or any of their Subsidiaries granted in the Ordinary Course;

(t) Liens on assets of Subsidiaries that are not Loan Parties securing Indebtedness incurred pursuant to *Section 6.1(p)*; and

(u) Liens not otherwise permitted under this Agreement and not securing Indebtedness in an aggregate amount not to exceed $500,000 at any time outstanding~~.~~; *provided* that after the Amendment No. 2 Effective Date, no such Liens shall be incurred if at the time of incurrence thereof or after giving effect thereto any Default or Event of Default has occurred and is continuing.

Section 6.3 No Negative Pledges. Except with respect to restrictions (a) in any agreement relating to a Joint Venture in which the Borrower and its Subsidiaries collectively own 10% or less of the outstanding Equity Interests on a fully-diluted basis that prohibit the holders of Equity Interests in such Joint Venture from granting a security interest in such Equity Interests or (b) by reason of customary provisions restricting assignments, subletting or other transfers contained in (i) leases, licenses and other agreements not in respect of Indebtedness entered into in the Ordinary Course in an Arm's-Length Transaction, (ii) agreements evidencing other Indebtedness permitted by *Section 6.1(e)*, and (iii) agreements related to Asset Sales permitted under *Section 6.7* (*provided* that, in the case of each of clauses (i), (ii) and (iii), such restrictions are limited to the property or assets subject to such lease, license, Asset Sale or similar arrangement and, in the case of an Asset Sale or similar arrangement, solely apply pending the consummation such Asset Sale), each Loan Party shall not, and shall not permit any of its Subsidiaries to, enter into any agreement after the Closing Date prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

Section 6.4 Restricted Payments; **Certain Payments of Indebtedness**. Each Loan Party shall not, and shall not permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly:

(a) declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Interests, return any capital to its stockholders, partners or members (or the equivalent Persons thereof) as such, make any distribution of assets, obligations, Equity Interests, other Securities or other property to its stockholders, partners or members (or the equivalent Persons thereof), or purchase, redeem, retire, defease or otherwise acquire for value any Equity Interests in such Loan Party, based on their ownership interest in such Subsidiary, except (i) payments in the form of Equity Interests (other than Disqualified Equity Interests) of the Borrower, (ii) Subsidiaries of the Borrower may declare and pay dividends ratably with respect to their Equity Interests ratably to their equityholders, (iii) in connection with the conversion of Securities of the Borrower into Equity Interests (other than Disqualified Equity Interests) and the payment in cash in lieu of fractional shares in connection therewith, (iv) so long as no Default or Event of Default has occurred and is continuing, payments made from the Net Cash Proceeds of the issuance of Equity Interests (other than Disqualified Equity Interests) by the Borrower within 180 days of such issuance; (v) payments by the Borrower to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of its Equity Interests; *provided* such payments are not made for the purpose of evading the restrictions of this *Section 6.4*; (vi) payments to satisfy dissenters' rights pursuant to or in connection with a merger, amalgamation, consolidation or transfer of assets not otherwise prohibited by this Agreement; (vii) payments to redeem or retire any warrants held by any Lender or Affiliate thereof, (viii) payments pursuant to stock compensation or similar plans in the Ordinary Course, or to repurchase, redeem or otherwise acquire Equity Interests of a Loan Party or its Subsidiaries held by any former employees, officers, directors or consultants, not to exceed $1,000,000 in any Fiscal Year, with unused amounts in any Fiscal Year being carried over to the next succeeding Fiscal Year (subject to a maximum of $2,500,000 of such payments in any Fiscal Year), (ix)

~~regularly scheduled interest payments with respect to the Convertible Notes~~[reserved], and (x) Tax Distributions; or

(b) make any voluntary prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal or interest on, or redeem, repurchase, retire or otherwise acquire, any Indebtedness for borrowed money, except (i) payments to the Agent or the Lenders in respect of the Obligations, (ii) regular scheduled payments of interest and principal as and when due (to the extent not prohibited by applicable subordination provisions in favor of the Agent), and (iii) the conversion of any Indebtedness into common Equity Interests.

Section 6.5 Restrictions on Subsidiary Distributions. Except as provided herein and in the other Loan Documents, each Loan Party shall not, and shall not permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of such Loan Party to (v) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by such Loan Party, (w) repay or prepay any Intercompany Indebtedness owed to a Loan Party (other than in accordance with any subordination agreement applicable thereto), (x) make loans or advances to any Loan Party, (y) transfer, lease or license any of its property or assets to any Loan Party other than restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the Ordinary Course in an Arm's-Length Transaction or (z) in the case of a Domestic Subsidiary, guarantee the Obligations and grant a first-priority security interest in substantially all of its assets of the type constituting Collateral.

Section 6.6 Investments. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments in cash and Cash Equivalents;

(b) Investments in or to any Loan Party by any other Loan Party;

(c) Investments by any Subsidiary of the Borrower that is not a Loan Party in or to another Subsidiary of the Borrower that is not a Loan Party;

(d) (i) Investments by any Loan Party in any Subsidiary or Joint Venture of the Borrower that is not a Loan Party (other than the Scilex Subsidiary) in an aggregate amount, together with the principal amount of any Intercompany Indebtedness incurred by any Subsidiary that is not a Loan Party pursuant to *Section 6.1(b)(ii)* and any amounts described in the proviso to *Section 6.6(h)*, not to exceed the Non-Loan Party Cap, (ii) (A) Investments by any Loan Party in the form of capital contributions in the Scilex Subsidiary in existence on or prior to the Closing Date, and (B) after the Closing Date, Investments by any Loan Party in the Scilex Subsidiary in the form of loans made directly or indirectly by a Loan Party to the Scilex Subsidiary in an aggregate principal amount not to exceed $~~25,000,000 at any time outstanding~~19,000,000 at any time outstanding, which loans shall at all times be evidenced by that certain Intercompany

Promissory Note dated October 5, 2018 made by the Scilex Subsidiary in favor of the Borrower and subordinated on the terms set forth in that certain Intercompany Subordination Agreement dated as of October 5, 2018, made by the Borrower and Scilex Subsidiary in favor of U.S. Bank National Association, in its capacity as collateral agent under the Scilex Indenture (which loans, for the avoidance of doubt, shall not be converted into Equity Interests), and (iii) the Scilex Subordinated Loan; *provided* that (i) no such Investments shall be made pursuant to this clause (d) after the Amendment No. 2 Effective Date if at the time of making such Investment any Default or Event of Default has occurred and is continuing or would result therefrom and (ii) during the period commencing on the Amendment No. 2 Effective Date and ending on the Step-Up Date, the principal amount of any additional Investments made pursuant to clause (ii)(B) above shall not exceed $4,000,000 in the aggregate.

(e) Investments in the Ordinary Course not otherwise prohibited by the terms of this Agreement and not in an aggregate amount at any time in excess of $5,000,000; *provided* that no such Investments shall be made after the Amendment No. 2 Effective Date if at the time of making such Investment any Default or Event of Default has occurred and is continuing or would result therefrom;

(f) [reserved];

(g) Equity Interests in third parties received as consideration for dispositions permitted by *Section 6.7(f)* or as performance incentives under agreements not otherwise prohibited by the terms of this Agreement pursuant to which no cash was paid for all or any portion of such Investment;

(h) Investments acquired or made in connection with any Permitted Acquisitions *provided*, that the aggregate consideration paid by Loan Parties for the acquisition of the capital stock of Persons that do not become Loan Parties (or assets that are not acquired by one or more Loan Parties) shall not exceed an amount equal to (i) the Non-Loan Party Cap less the amount of any Investments pursuant to *Section 6.6(d)(i)* plus (ii) an amount equal to 75% of the Net Cash Proceeds from the issuance of common stock of the Borrower (excluding any such proceeds applied to make Restricted Payments pursuant to *Section 6.4(a)(iv)*) that are applied to fund such Investments within 90 days of such issuance; and provided further that if such Investment is acquired or made after the Amendment No. 2 Effective Date, no Default or Event of Default has occurred and is continuing on the date of thereof or would result therefrom;

(i) Loans and advances in the Ordinary Course to employees, officers, directors or consultants or the Guarantee of any such loans or advances made by a third party in an amount not to exceed $250,000 at any time outstanding; *provided* that no such Investments shall be made after the Amendment No. 2 Effective Date if at the time of making such Investment any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) any Investment existing on, or made pursuant to binding commitments existing on, the Closing Date and set forth on *Schedule 6.6*;

(k) any Investment acquired by a Loan Party or any of its Subsidiaries (a) in exchange for any other Investment or accounts receivable held by such Person in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by such Person with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(l) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of the Borrower;

(m) Hedging Obligations permitted under *Section 6.14*; and

(n) Investments in the Ordinary Course consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not, and shall not permit any of its Subsidiaries to (x) directly or indirectly transfer, by means of contribution, sale, assignment, lease or sublease, license or other disposition of any kind, any Specified Assets to any Person other than a Loan Party or (y) permit any Person other than Loan Parties wholly-owned, directly or indirectly, by the Borrower, to hold any interest in the Specified Assets, in each case, except (I) pursuant to Asset Sales to Persons that are not Affiliates of the Borrower permitted pursuant to *Section 6.7* so long as the Net Cash Proceeds thereof are applied in accordance with *Section 2.7(b)* and (II) the assets comprising the Virttu Biologics business and the assets comprising the Levena Biopharma business that are owned by wholly-owned Foreign Subsidiaries of the Loan Parties as of the Closing Date may continue to be owned by such wholly-owned Subsidiaries, (ii) no Intellectual Property owned by any Loan Party that is material to the business or operations of the Borrower and its Subsidiaries shall be contributed as an Investment by any Loan Party to any Person that is not a Loan Party and (iii) none of the Loan Parties nor any of their Subsidiaries shall, directly or indirectly, make any Investment in the Scilex Subsidiary other than in accordance with and pursuant to *Sections 6.6(d)(ii) and (iii)* above.

Section 6.7 Fundamental Changes; Disposition of Assets. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, (i) enter into any merger, consolidation, amalgamation or division, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) consummate an Asset Sale or (iv) sell, transfer, license or otherwise dispose of, in one transaction or a series of related transactions, all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, in each case, except:

(a) (i) any Subsidiary of any Loan Party (other than the Borrower) may enter into any merger, consolidation, amalgamation or division with or into such Loan Party or any other Subsidiary of such Loan Party, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred, licensed or otherwise disposed of, in one transaction or a series of transactions, to a Loan Party; *provided*, *however*, in the case of such a merger, consolidation, amalgamation or division involving a Loan

Party and a Subsidiary of the Borrower that is not a Loan Party, such Loan Party shall be the continuing or surviving Person; *provided further* that in no event shall the Borrower be party to any merger, consolidation, amalgamation or division or be liquidated, wound up or dissolved, and (ii) any Subsidiary that is not a Loan Party may enter into any merger, consolidation, amalgamation or division with or into any other Subsidiary that is not a Loan Party, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred, licensed or otherwise disposed of, in one transaction or a series of transactions, to Subsidiary that is not a Loan Party;

(b) (i) any Asset Sale to a Loan Party by another Loan Party or (ii) any Asset Sale by a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(c) Dispositions of delinquent accounts receivable in connection with the collection or compromise thereof in the Ordinary Course in an Arm's-Length Transaction;

(d) leases or subleases (other than in respect of Intellectual Property) granted by any Loan Party or any of its Subsidiaries to third parties in respect of surplus property which is not fundamental to the operation of the business in the Ordinary Course; *provided* that such leases and subleases are on arms-length commercial terms;

(e) so long as no Default has occurred and is continuing on the date of grant, (i) non-exclusive licenses and sublicenses in respect of Intellectual Property in the Ordinary Course, and (ii) exclusive licenses and sublicenses in respect of the Intellectual Property relating to CD38, RTX or carcinoembryonic antigen so long as (x) the Loan Party or Subsidiary licensing such Intellectual Property receives aggregate non-refundable upfront consideration of at least $75,000,000 therefor (of which at least $50,000,000 shall consist of cash), (y) such license or sublicense is not to an Affiliate of the Borrower and (z) to the extent a Loan Party is the licensor or sublicensor, such proceeds and any rights to future payments pursuant to such license or sublicense shall not directly or indirectly be contributed to or invested in a Person that is not a Loan Party;

(f) sales or other dispositions of Equity Interests of a Subsidiary of the Borrower so long as (i) after giving effect to such transaction and any related transactions, the Borrower or Subsidiary that owned the Equity Interests of such Subsidiary immediately prior to such transactions continues to hold at least 70% of the Equity Interests of such Subsidiary measured by voting power and economic rights and shall continue to hold such Equity Interests on a going forward basis and (ii) to the extent such Subsidiary was, or was required to be, a Loan Party immediately prior to such transactions, such Subsidiary continues (x) to be a Loan Party following such transactions and on a going forward basis, (y) to guarantee the Obligations pursuant to the Guaranty following such transactions and on a going forward basis, and (z) to grant a valid first-priority security interest in its assets to secure the Obligations following such transactions and on a going forward basis, in each case, to the same extent as would be required under this Agreement and the other Loan Documents if such Subsidiary were a wholly-owned Subsidiary of the Borrower; *provided* that no such sales or other dispositions shall be made after the Amendment No. 2 Effective Date if at the time of such sale or other disposition any Default or Event of Default has occurred and is continuing or would result therefrom;

(g) sales of Non-Core Assets in any Arm's-Length Transaction so long as (i) the consideration for such sale is at least equal to the fair market value of the assets being sold, with at least 50% of such consideration consisting of cash, and (ii) the fair market value of all assets sold pursuant to this paragraph (g) shall not exceed $75,000,000 in the aggregate; *provided* that no such sales shall be made after the Amendment No. 2 Effective Date if at the time of such sale or other disposition any Default or Event of Default has occurred and is continuing or would result therefrom;

(h) other Asset Sales so long as (i) the consideration for any such Asset Sale is at least equal to the fair market value of the assets being sold, with at least 75% of such consideration consisting of cash, and (ii) the fair market value of all assets sold, transferred, leased, licensed or otherwise disposed of pursuant to this paragraph (h) shall not exceed $50,000,000 in the aggregate; *provided* that no such Asset Sales shall be made after the Amendment No. 2 Effective Date if at the time of such sale or other disposition any Default or Event of Default has occurred and is continuing or would result therefrom;

(i) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any wholly-owned Subsidiary of the Borrower may merge or consolidate with any Person other than another Subsidiary in order to effect a Permitted Acquisition; *provided* that (i) in the case of any merger or consolidation involving a Loan Party, such Loan Party is the continuing or surviving Person and remains a Loan Party and (ii) after giving effect to such merger or consolidation, such Subsidiary continues to be a wholly-owned Subsidiary of the Borrower; ~~and~~

(j) any sale, transfer or other disposition of the Equity Interests of the Scilex Subsidiary; and

(k) exclusive licenses and sublicenses in respect of the Intellectual Property in connection with the Specified Transactions.

Section 6.8 Transactions with Affiliates. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of such Loan Party other than in an Arm's-Length Transaction; *provided*, the foregoing restriction shall not apply to (i) any transaction between the Loan Parties, (ii) the payment of reasonable and customary compensation, benefits, fees and reimbursement of expenses paid to, and indemnity, contribution and insurance provided on behalf of, officers, directors, employees or consultants of the Borrower and its Subsidiaries (including the Scilex Subsidiary), (iii) restricted payments permitted under *Section 6.4* and (iv) Intercompany Indebtedness permitted under *Section 6.1* and Investments by Loan Parties in Subsidiaries of the Borrower pursuant to *Section 6.6(d)*; *provided* that (A) in the event any transaction or series of related transactions with any Affiliate of any Loan Party not described in clauses (i) through (iv) above involves aggregate consideration in excess of $5,000,000, the terms of such transaction have been approved by a majority of the members of the board of directors of the Borrower having no personal stake in such transaction and such majority determines that such transaction is an Arm's-Length Transaction, (B) in the event any such transaction or series of related

transactions not described in clauses (i) through (iv) involves aggregate consideration in excess of $10,000,000, the Borrower shall have provided the Agent with an opinion from an Independent Financial Advisor stating that such transaction is fair to the Loan Parties from a financial point of view. Notwithstanding the foregoing, in no event shall any Affiliate of any Loan Party (other than another Loan Party or wholly-owned Subsidiary thereof providing Indebtedness permitted pursuant to *Section 6.1(b)*) be permitted to be a lender to, or otherwise provide any Indebtedness to, any Loan Party or any of its Subsidiaries or directly, indirectly or beneficially hold any such Indebtedness.

Section 6.9 Conduct of Business. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by the Loan Parties on the Closing Date and similar or related businesses.

Section 6.10 Fiscal Year. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, change its Fiscal Year from a Fiscal Year ending December 31 without prior written consent of the Agent.

Section 6.11 Investment Company Act. Each Loan Party shall not suffer or permit any event to occur that would cause the Borrower or any other Loan Party to be an "investment company" within the meaning of the Investment Company Act of 1940.

Section 6.12 Organizational Documents. No Loan Party shall enter into any amendment, supplement or other modification of its Organizational Documents or shall cause or permit any of its Subsidiaries to permit any amendment, supplement or modification of their respective Organizational Documents, in each case in any way that would reasonably be expected to materially adversely affect the interests of the Lenders under this Agreement or the other Loan Documents.

Section 6.13 Anti-Terrorism Laws. None of the Loan Parties, their Subsidiaries or any of their agents shall:

(a) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person;

(b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or

(c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth any Sanctions, the USA PATRIOT Act or any other Anti-Terrorism Law.

Each Loan Party shall and shall cause its Subsidiaries to deliver to the Agent and/or any Lender any certification or other evidence reasonably requested from time to time by any the Agent and/or any Lender in its sole discretion, confirming the Loan Parties' compliance with this *Section 6.13*.

Section 6.14 Hedging Agreements. No Loan Party nor any of their Subsidiaries shall enter into Hedging Agreements for speculative purposes.

Section 6.15 Minimum Liquidity~~(a)~~. The Borrower shall maintain at all times ~~$15,000,000 (the "~~cash in an amount equal to or greater than the Minimum Liquidity Amount~~") of cash~~ subject to no liens (other than (i) Liens in favor of the Agent for the benefit of the Secured Parties and (ii) statutory Liens in favor of the applicable depositary bank) in bank accounts over which the Agent has a perfected first~~-~~ priority security interest ~~within the time period set forth on *Schedule 5.17* hereto~~; *provided* that cash in the Debt Service Reserve Account up to the Debt Service Reserve Amount shall not count toward the Minimum Liquidity Amount. "**Minimum Liquidity Amount**" means (i) during the period commencing on the Amendment No. 2 Effective Date and ending on and including December 31, 2019, $10,000,000, or (ii) at all other times, $15,000,000; *provided* that in the event the Borrower makes an optional prepayment of at least $50,000,000 in principal amount of the Loans in accordance with *Section 2.6* on or prior to March 31, 2020, the Minimum Liquidity Amount shall be $10,000,000. Agent agrees not to exercise any rights under any control agreement on any such accounts unless ~~an~~a Default or Event of Default has occurred and is continuing.

ARTICLE VII
EVENTS OF DEFAULT

Section 7.1 Events of Default. If any of the following events (each, an "**Event of Default**") shall occur:

(a) the Borrower or any other Loan Party shall fail to pay (i) any principal of any Loan when and as the same shall become due and payable, whether at the Scheduled Maturity Date or otherwise or (ii) any amount of any prepayment under *Section 2.7* at a date fixed for prepayment thereof;

(b) the Borrower or any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in *Section 7.1(a)*) payable under this Agreement, when and as the same shall become due and payable, and such failure, in the case of interest on any Loan, shall continue unremedied for a period of five (5) Business Days and, in the case of any fee or other amount, shall continue unremedied for a period of five (5) Business Days following the written demand by the Agent to the applicable Loan Party for such payment;

(c) any representation or warranty made by the Borrower or any other Loan Party in writing in connection with this Agreement or any Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect in any material respect when made;

(d) the Borrower or any other Loan Party shall fail to observe or perform any covenant, condition or agreement contained in *Sections 5.1* (Financial Statements and Other

Reports), *5.2* (Existence, with respect to each Loan Party's existence) *5.5* (Insurance), *5.6* (Books and Records; Inspections), *5.7(b)* (Compliance with Laws), *5.8* (Additional Guarantors), *5.13* (Debt Service Reserve Account; Blocked Liquidity Account), *5.18* (Additional Liquidity) or *Article VI* (Negative Covenants), any term of Amendment No. 2 or the fee letter entered into in connection therewith or any material term of the Board Rights Letter;

(e) the Borrower or any other Loan Party shall fail to observe or perform any covenant, condition or agreement to be observed or performed by such Person and contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document, and such failure shall continue unremedied for a period of ~~thirty (30) days~~five (5) Business Days;

(f) the Borrower, any other Loan Party or any of their Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (subject to any applicable grace or cure period) unless such failure is waived or consented to by the holder(s) of such Material Indebtedness prior to the acceleration of the Obligations;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity unless the holder(s) of such Material Indebtedness consent thereto or waive their rights with respect thereto prior to the acceleration of the Obligations;

(h) (i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (A) relief in respect of a Loan Party or any Material Subsidiary, or of a substantial part of the property or assets of a Loan Party or a Material Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for a Loan Party or any Material Subsidiary or for a substantial part of the property or assets of a Loan Party or a Material Subsidiary or (C) the winding-up or liquidation of a Loan Party or any Material Subsidiary; and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or (ii) a Loan Party or any Material Subsidiary shall (A) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause *(h)(i)* above, (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for a Loan Party or any Material Subsidiary or for a substantial part of the property or assets of a Loan Party or any Material Subsidiary, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E)

make a general assignment for the benefit of creditors, or (F) take any action for the purpose of effecting any of the foregoing;

(i) any Loan Party is (i) not Solvent, (ii) unable or admits inability to pay its debts as they fall due, or (iii) is deemed to, or is declared to, be unable to pay its debts under applicable law;

(j) one or more final judgments for the payment of money in an aggregate amount in excess of $5,000,000 (net of any amounts that are covered by enforceable insurance policies issued by solvent carriers) shall be rendered against any other Loan Party or their respective Subsidiary or any combination thereof and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any other Loan Party or any of their respective Subsidiaries to enforce any such judgment;

(k) any Collateral Document shall for any reason fail to create, or shall be asserted in writing by any Loan Party to fail to create, a valid and perfected first priority security interest in any material portion of the Collateral purported to be covered thereby, except as permitted by the terms of any Loan Document or as a result of any action or inaction of the Agent so long as not resulting from the breach of or non-compliance with any Loan Document by any Loan Party;

(l) any Loan Document shall for any reason be asserted in writing by any Loan Party or its Affiliates not to be a legal, valid and binding obligation of such party thereto;

(i) (A) there shall occur one or more ERISA Events which individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect; or (B) there occurs any fact or circumstance that results in the imposition of a Lien or security interest on any material portion of the Collateral pursuant to Section 430(k) of the Internal Revenue Code or ERISA; or

(m) there occurs any Change of Control;

then, in every such event, and at any time thereafter during the continuance of such event, the Agent may, and at the written request of the Required Lenders shall, by notice to the Borrower, (A) terminate the Commitments and declare the Loans then outstanding to be due and payable in whole, and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Loan Parties accrued hereunder and under any other Loan Document, including any applicable Prepayment Premium and the Exit Fee, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party and (B) exercise any and all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity; *provided* that, in the case of any event with respect to any Loan Party described in *Section 7.1(h)*, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations of the Loan Parties accrued hereunder and any other Loan Documents,

including any applicable Prepayment Premium and the Exit Fee, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party. For the avoidance of doubt, the Prepayment Premium and the Exit Fee shall be due and payable by the Loan Parties immediately prior to, and notwithstanding, the automatic acceleration of the outstanding principal of the Loans and all other accrued liabilities contemplated hereunder.

ARTICLE VIII
AGENCY

Section 8.1 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and to hold the benefit of the Collateral upon trust for the Secured Parties. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Any reference to or use of the term "collateral agent" or "administrative agent" in any Loan Document is intended as a reference to the Agent in both such capacities.

Section 8.2 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.3 Exculpatory Provisions.

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in *Section 10.2* and *Section 7.1)*, or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default and conspicuously identified as a "notice of default" is given to the Agent in writing by any Loan Party or a Lender.

(c) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in *Article III* or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 8.4 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of

such Loan. The Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.5 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the activities as Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 8.6 Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) a Lender holding at least 30% outstanding principal amount of the Loans or any Affiliate thereof or (ii) any other financial institution consented to by the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); *provided*, that, the consent of the Borrower shall not be required to the extent an Event of Default has occurred and is continuing. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the **"Resignation Effective Date**"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders and in consultation with the Borrower, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Agent has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the **"Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) except for any indemnity or expense reimbursement payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity and expense reimbursement payments owed to the retiring or removed Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent after the date such successor becomes Agent shall be the same as those that would have been payable to its predecessor after such date unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and *Section 10.3*, shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

Section 8.7 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 8.8 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower or any other Loan Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and

counsel and all other amounts due the Lenders and the Agent under *Section 10.3)* allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under *Section 10.3*.

Section 8.9 Collateral and Guarantee Matters. (a) The Secured Parties irrevocably authorize the Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Agent under any Loan Document (x) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (y) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Loan Documents, or (z) subject to *Section 10.2*, if approved, authorized or ratified in writing by the Required Lenders; and

(ii) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary of the Borrower as a result of a transaction permitted under the Loan Documents.

Upon request by the Agent at any time, the Required Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this *Section 8.9*, and if so requested, the Agent shall have no liability for failure to release or subordinate any such interest or for failure to release any Guarantor until it shall have received confirmation from the Required Lenders.

(b) The Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

ARTICLE IX
GUARANTY

Section 9.1 The Guaranty. Each of the Guarantors hereby unconditionally guarantees, jointly and severally with each other Guarantor, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the Obligations, including, without limitation, (i) the principal of and interest on the extension of credit made to the Borrower pursuant to this Agreement, (ii) all other amounts payable by the Borrower and the Guarantors under this Agreement and the other Loan Documents and (iii) the punctual and faithful performance, keeping, observance, and fulfillment by the Borrower and the Guarantors of all of the agreements, conditions, covenants, and obligations of the Borrower and the Guarantors contained in the Loan Documents (collectively, the "**Guaranteed Obligations**"). Upon failure by the Borrower or any Guarantor to pay punctually any such amount or perform such obligation, such that an Event of Default occurs and continues, each of the Guarantors agrees that it shall forthwith on demand pay such amount or perform such obligation at the place and in the manner specified herein or in the relevant Loan Document, as the case may be. All payments required to be made by each Guarantor hereunder shall be applied by the Agent in accordance with *Section 2.8*. Each of the Guarantors hereby agrees that the guaranty hereunder is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection.

Section 9.2 Guaranty Unconditional. The obligations of each Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(b) any modification or amendment of or supplement to this Agreement or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations guaranteed hereby;

(c) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, such Guarantor or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, such Guarantor or any other guarantor of the Guaranteed Obligations, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower, such Guarantor or any other guarantor of any of the Guaranteed Obligations;

(d) the existence of any claim, setoff or other rights which the Guarantors may have at any time against the Borrower, any other guarantor of any of the Guaranteed Obligations, the Agent, any Secured Party or any other Person, whether in connection herewith or in connection with any unrelated transactions; *provided* that, notwithstanding any other provisions in this Guaranty, nothing in this Guaranty shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(e) the unenforceability or invalidity of the Guaranteed Obligations or any part thereof or the lack of genuineness, enforceability or validity of any agreement relating thereto or with respect to the collateral, if any, securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower, such Guarantor or any other guarantor of any of the Guaranteed Obligations, for any reason, related to this Agreement or any other Loan Document, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment of any of the Guaranteed Obligations by the Borrower, such Guarantor or any other guarantor of the Guaranteed Obligations;

(f) the failure of the Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Guaranteed Obligations, if any;

(g) the disallowance, under any Debtor Relief Laws, of all or any portion of the claims of the Secured Parties or the Agent for repayment of all or any part of the Guaranteed Obligations;

(h) the failure of any other guarantor to sign or become party to this Agreement or any amendment, change, or reaffirmation hereof;

(i) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations; or

(j) any other act or omission to act or delay of any kind by the Borrower, such Guarantor, any other guarantor of the Guaranteed Obligations, the Agent, any Secured Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this *Section 9.2*, constitute a legal or equitable discharge of any Guarantor's obligations hereunder.

Section 9.3 Discharge Only Upon Payment In Full. Subject to any prior release herefrom of any Guarantor by the Agent in accordance with (and pursuant to authority granted to the Agent under) the terms of this Agreement, each Guarantor's obligations hereunder shall remain in full force and effect until the Commitments have terminated and all of the Guaranteed Obligations shall have been indefeasibly paid in full in cash and the Loans issued

under this Agreement shall have terminated or expired, and all other financing arrangements among the Borrower or any Guarantor and the Secured Parties under or in connection with this Agreement and each other Loan Document shall have terminated (herein, the "**Termination Conditions**"), and until the prior and complete satisfaction of the Termination Conditions all of the rights and remedies under this Guaranty and the other Loan Documents shall survive.

Section 9.4 Additional Waivers; General Waivers.

(a) *Additional Waivers.* Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (A) notice of acceptance hereof; (B) notice of any other financial accommodations made or maintained under the Loan Documents or the creation or existence of any Guaranteed Obligations; (C) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of the Agent and the Secured Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (D) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (E) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (F) notice of any Event of Default; and (G) all other notices (except if such notice is specifically required to be given to such Guarantor under this Guaranty or under the other Loan Documents) and demands to which each Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Agent and the Secured Parties to institute suit against, or to exhaust any rights and remedies which the Agent and the Secured Parties now have or may hereafter have against, any other guarantor of the Guaranteed Obligations or any third party, or against any collateral provided by such other guarantors or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of any other guarantor of the Guaranteed Obligations or by reason of the cessation from any cause whatsoever of the liability of any other guarantor of the Guaranteed Obligations in respect thereof;

(iv) (A) any rights to assert against the Agent and the Secured Parties any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against any other guarantor of the Guaranteed Obligations or any third party liable to the Agent and the Secured Parties; (B) any defense, set-off, counterclaim or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity or enforceability of the Guaranteed Obligations or any security therefor; (C) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by

reason of: (1) the impairment or suspension of the Agent's and the Secured Parties' rights or remedies against any other guarantor of the Guaranteed Obligations; (2) the alteration by the Agent and the Secured Parties of the Guaranteed Obligations; (3) any discharge of the obligations of any other guarantor of the Guaranteed Obligations to the Agent and the Secured Parties by operation of law as a result of the Agent's and the Secured Parties' intervention or omission; or (4) the acceptance by the Agent and the Secured Parties of anything in partial satisfaction of the Guaranteed Obligations; and (D) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Agent and the other Secured Parties; or (b) any election by the Agent and the other Secured Parties under any provision of any Debtor Relief Law to limit the amount of, or any collateral securing, its claim against the Guarantors.

(b) *General Waivers*. Each Guarantor irrevocably waives, to the fullest extent permitted by law, any notice not provided for herein, in any Loan Document or any other agreement, document or instrument executed in connection herewith or therewith.

Section 9.5 Stay of Acceleration. If acceleration of the time for payment of any amount payable by any Loan Party under this Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of such Loan Party at any time while this Guaranty is in effect, all such amounts otherwise subject to acceleration under the terms of this Agreement or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Agent.

Section 9.6 Reinstatement. Notwithstanding anything to the contrary contained in this Guaranty, each of the Guarantors agrees that (a) if at any time payment, or any part thereof, of any Guaranteed Obligation is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid under any Debtor Relief Law or equitable cause, then, to the extent of such payment or repayment, its guarantee hereunder shall remain in full force and effect, as fully as if such payment had never been made or, shall be reinstated in full force and effect, as the case may be; and (b) the provisions of this *Section 9.6* shall survive termination of this Guaranty.

Section 9.7 Subrogation. Until the prior and complete satisfaction of all Termination Conditions, each Guarantor, (i) shall have no right of subrogation with respect to the Guaranteed Obligations and (ii) waives any right to enforce any remedy which the Secured Parties or the Agent now have or may hereafter have against the Borrower, any endorser or any other guarantor of all or any part of the Guaranteed Obligations or any other Person, and each Guarantor waives any benefit of, and any right to participate in, any security or collateral that may from time to time be given to the Secured Parties and the Agent to secure the payment or

performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Secured Parties. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights prior to complete satisfaction of the Termination Conditions, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set-off that such Guarantor may have to prior and complete satisfaction of the Termination Conditions, and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until all Termination Conditions are satisfied in full. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Agent and the Secured Parties and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Agent, the Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this *Section 9.7*.

Section 9.8 Subordination of Intercompany Indebtedness. Each Guarantor agrees that all Intercompany Indebtedness held by such Guarantor and owed by a Loan Party shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations and the satisfaction of all other Termination Conditions; *provided* that, and not in contravention of the foregoing, so long as no Event of Default has occurred and is continuing, such Guarantor may make loans to and receive payments not prohibited by the terms of this Agreement or any other Loan Document with respect to such Intercompany Indebtedness from the related obligor. Should any payment, distribution, security or instrument or proceeds thereof be received by such Guarantor upon or with respect to the Intercompany Indebtedness in contravention of this Agreement, any other Loan Document or after the occurrence and continuance of an Event of Default, including, without limitation, an event described in *Section 7.1(g)*, *Section 7.1(h)* or *Section 7.1(i)*, prior to the satisfaction of all of the Termination Conditions, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Secured Parties and shall forthwith deliver the same to the Agent, for the benefit of the Secured Parties, in precisely the form received (except for the endorsement or assignment of such Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by such Guarantor as the property of the Secured Parties. If any Guarantor fails to make any such endorsement or assignment to the Agent, the Agent or any of its officers or employees are irrevocably authorized to make the same.

Section 9.9 Contribution with Respect to Guaranteed Obligations.

(a) To the extent that any Guarantor shall make a payment under this Guaranty (a "**Guarantor Payment**") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment,

then, following the prior and complete satisfaction of the Termination Conditions, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, *pro rata* based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "**Allocable Amount**" of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Agreement without rendering such claim voidable or avoidable under any Debtor Relief Law or other applicable law.

(c) This *Section 9.9* is intended only to define the relative rights of the Guarantors, and nothing set forth in this *Section 9.9* is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Guarantors against other Guarantors under this *Section 9.9* shall be exercisable upon the prior and complete satisfaction of the Termination Conditions.

ARTICLE X
MISCELLANEOUS

Section 10.1 Notices; Effectiveness; Electronic Communication.

(a) *Notices Generally*. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile (other than to the Borrower or any other Loan Party) or email as follows:

(i) if to the Borrower or any other Loan Party, to it at its address (or e-mail) as set forth in *Appendix A*;

(ii) if to the Agent, to the address (or facsimile number or e-mail) of its Principal Office as set forth in *Appendix A*;

(iii) if to the Lenders party hereto as of the Closing Date, to the address (or facsimile number or e-mail) as set forth in *Appendix A*;

(iv) if to any other Lender, to it at its address (or facsimile number or e-mail) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have

been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) *Electronic Communications*. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient. Any such notices and other communications furnished by electronic communication shall be in the form of attachments in .pdf format.

(c) *Change of Address, etc*. Any party hereto may change its address, email or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

Section 10.2 Waivers; Amendments.

(a) No failure or delay by the Agent, or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this *Section 10.2*, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower or the applicable Loan Party, as the case may be, and the Required Lenders (with a

copy thereof to the Agent) or by the Borrower or such applicable Loan Party, and the Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees or premiums payable hereunder, without the written consent of each Lender affected thereby, (ii) ~~increase the Delayed Draw Term Loan Commitment of any Lender or otherwise modify the conditions to the funding of the Delayed Draw Term Loans without the written consent of each Lender affected thereby~~[reserved], (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or extend the Maturity Date, without the written consent of each Lender affected thereby, (iv) change *Section 2.8(c)* or *Section 2.10* in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, or (v) change any of the provisions of this *Section 10.2* or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent, hereunder without the prior written consent of the Agent.

Section 10.3 Expenses; Indemnity; Damage Waiver.

(a) *Costs and Expenses*. The Loan Parties shall, jointly and severally, pay (i) all reasonable out-of-pocket expenses incurred by the Agent and the Lenders and their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel for the Agent and if necessary, a single local counsel for the Agent in each relevant material jurisdiction) in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Agent or any Lender (including the fees, charges and disbursements of any counsel for the Agent or any Lender), in connection with the enforcement, exercise or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this *Section 10.3(a)*, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) *Indemnification by the Loan Parties*. Each Loan Party shall, jointly and severally, indemnify the Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party, except to the extent set forth below) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions

contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party (except to the extent set forth below), and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available (x) to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the ~~gross negligence or~~ willful misconduct of such Indemnitee, or (y) in connection with any dispute between or among any one or more of the Agent and/or any Lender(s). This *Section 10.3(b)* shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) *Reimbursement by Lenders*. To the extent that any Loan Party for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof) or any Related Party of the Agent (or any such sub-agent), each Lender severally agrees to pay to the Agent (or any such sub-agent) or such Related Party of the Agent (or such sub-agent), as the case may be, such Lender's ratable share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Pro Rata Share of the aggregate amount of the Loans outstanding at such time, or if all Loans have been repaid, based on such Lender's Pro Rata Share of the Loans as of the last day on which any portion of the Loans remained outstanding) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or against any Related Party acting for the Agent (or any such sub-agent) in connection with such capacity.

(d) *Waiver of Consequential Damages, Etc*. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any other party hereto or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof; *provided* that nothing in the foregoing shall limit the indemnification obligations of the Loan Parties pursuant to clause (b) above. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) *Payments*. All amounts due under this Section shall be payable promptly after demand therefor.

Section 10.4 Successors and Assigns.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this *Section 10.4*, (ii) by way of participation in accordance with the provisions of paragraph (d) of this *Section 10.4*, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this *Section 10.4* (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this *Section 10.4* and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loan at the time owing to it); *provided*, that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts*.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Loan at the time owing to it or contemporaneous assignments to related Approved Assignees that equal at least the amount specified in paragraph (b)(i)(B) of this *Section 10.4* in the aggregate or in the case of an assignment to an Approved Assignee, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this *Section 10.4*, the aggregate amount of the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption Agreement with respect to such assignment is accepted and recorded by the Agent) shall not be less than $1,000,000, unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed).

(ii) *Proportionate Amounts*. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan assigned.

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this *Section 10.4* and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to an Approved Assignee; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within five (5) Business Days after having received written notice thereof; and

(B) the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Loans to a Person who is not an Approved Assignee.

(iv) *Assignment and Assumption*. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption Agreement, together with a processing and recordation fee of $3,500 (to be paid by the assignor and assignee); *provided* that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire and any other Know-Your-Customer or other documentation or information reasonably requested by the Agent, including, without limitation, any such documentation or information required under the USA PATRIOT Act or anti-money laundering rules and regulations.

(v) *No Assignment to Certain Persons*. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) *No Assignment to Natural Persons*. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

Subject to acceptance and recording thereof by the Agent pursuant to paragraph (c) of this *Section 10.4*, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of *Section 2.10* and *Section 10.3* with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for

purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this *Section 10.4*.

(c) *Register*. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(d) *Participations*. Any Lender may at any time, with the consent of the Borrower and the Agent (each such consent not to be unreasonably withheld, conditioned or delayed), sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under *Section 10.3(c)* with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the amendments or modifications requiring unanimous consent of the Lenders described in *Section 10.2(b)* that directly affect such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of *Section 2.12*, *Section 2.14* and *Section 2.11* (subject to the requirements and limitations therein, including the requirements under *Section 2.11(e)* (it being understood that the documentation required under *Section 2.11(e)* shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this *Section 10.4*; *provided* that such Participant (x) agrees to be subject to the provisions of *Section 2.13* as if it were an assignee under paragraph (b) of this *Section 10.4*; and (y) shall not be entitled to receive any greater payment under *Section 2.11* or *Section 2.12*, with respect to any participation, than its participating Lender would have been entitled to receive. To the extent permitted by law, each Participant also shall be entitled to the benefits of *Section 2.9* as though it were a Lender; *provided* that such Participant agrees to be subject to *Section 2.10* as though it were a Lender. Each Lender that sells a participation shall,

acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Certain Pledges*. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.5 Survival. All covenants, agreements, representations and warranties made by the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of the Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent, or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any Commitment is outstanding or the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid. The provisions of *Section 2.11*, *Section 2.12*, *Section 2.14*, *Section 10.3* and *Article VIII* shall survive and remain in full force and effect regardless of the repayment of the Loans or the termination of this Agreement or any provision hereof. Except as expressly set forth in this *Section 10.5*, this Agreement shall terminate when the Commitments have terminated and the Obligations have been indefeasibly paid in full in cash, including the Prepayment Premium, if applicable, and the Exit Fee but excluding contingent indemnification obligations (other than those with respect to which the Agent or any Lender has then given notice to the Borrower); *provided*, *however*, that the Guaranty shall remain in full force and effect until the Termination Conditions have been completely satisfied and the other Loan Documents and the Collateral Documents, shall remain in full force and effect until terminated in accordance with their respective terms. Notwithstanding the termination of this Agreement or any provision hereof, *Section 10.2*, *Sections 10.4(a)*, *(b)*, *(c)* and *(d)*, and *Section 10.6(b)* shall survive and remain in full force and effect until the Commitments are terminated and all Obligations are indefeasibly paid in full.

Section 10.6 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) *Counterparts; Integration; Effectiveness*. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, including the Fee Letters, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in *Section 3.1*, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) *Electronic Execution of Assignments*. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.8 Governing Law; Jurisdiction.

(a) *Governing Law*. This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) *Jurisdiction*. Each Loan Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Agent, any Lender or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof; and each of the parties

hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction.

(c) *Waiver of Venue*. Each Loan Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this *Section 10.8*. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) *Service of Process*. Each party hereto irrevocably consents to service of process in the manner provided for notices in *Section 10.1*.

Section 10.9 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.9.

Section 10.10 Treatment of Certain Information; Confidentiality.

(a) The Agent and each of the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will agree to be bound by the provisions of this *Section 10.10*); (ii) to the extent required or requested by, or as part of normal reporting or review procedures to or examinations by, any Governmental Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority,

such as the National Association of Insurance Commissioners) or any securities exchange on which securities of the disclosing party or any Affiliate thereof are listed or traded; (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, including reporting requirements applicable to the disclosing party or its Affiliates; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (vi) subject to an agreement containing provisions substantially the same as those of this *Section 10.10*, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Loan Parties and their obligations, this Agreement or payments hereunder; (vii) on a confidential basis to (A) any rating agency in connection with rating the Loan Parties or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans; (viii) with the written consent of the Borrower; (ix) to market data collectors, similar service providers to the lending industry and service providers to the Agent and the Lenders in connection with the administration of this Agreement, or (x) to the extent such Information (A) becomes publicly available other than as a result of a breach of this *Section 10.10*, or (B) becomes available to the Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties so long as the Agent or such Lender does not have any notice that the disclosure thereof is a breach of a confidentiality agreement.

(b) For purposes of this *Section 10.10*, "**Information**" means all information received from the Borrower or any Subsidiary relating to the Borrower, any Subsidiary or the Scilex Subsidiary or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any other Loan Party. Any Person required to maintain the confidentiality of Information as provided in this *Section 10.10* shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(c) The Loan Parties, the Agent and the Lenders agree not to publish any press release with respect to the Loan or other transactions contemplated by this Agreement without the prior consent of each other party to this Agreement.

Section 10.11 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such

Loan but were not payable as a result of the operation of this *Section 10.11* shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.12 USA PATRIOT Act. The Agent and each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the each Loan Party and other information that will allow the Agent and each such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

Section 10.13 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties hereto, each such party hereto acknowledges that any liability of any Lender or Agent that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or Agent that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each party hereto has duly executed this Agreement as of the date first above written.

Borrower: **SORRENTO THERAPEUTICS, INC.**

By:_____
Name: Henry Ji., Ph.D.
Title: Chairman of the Board, President and
Chief Executive Officer

Guarantor: **ARK ANIMAL HEALTH, INC.**

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

BIOSERV CORPORATION

By:_____
Name: Henry Ji., Ph.D.
Title: President

COENTRE TECHNOLOGIES LLC

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

CONCORTIS BIOSYSTEMS, CORP.

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

LA CELL, INC.
By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

SCINTILLA PHARMACEUTICALS, INC.

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

SNAN HOLDCO LLC

By:_____
Name: Henry Ji., Ph.D.
Title: Manager

SORRENTO BIOLOGICS, INC.

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

TNK THERAPEUTICS, INC.
By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

BDL PRODUCTS, INC.

By:_____
Name: Henry Ji., Ph.D.
Title: President

CARGENIX HOLDINGS LLC

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

CONCORTIS, INC.

By:_____
Name: Henry Ji., Ph.D.
Title: President

LEVENA BIOPHARMA US, INC.

By:_____
Name: Henry Ji., Ph.D.
Title: Chief Executive Officer

SINIWEST HOLDING CORP.

By:_____
Name: Henry Ji., Ph.D.
Title: President

Agent: **OAKTREE FUND ADMINISTRATION, LLC**

By:_____
Name:
Title:

[Signature Page to Term Loan Agreement]

Lenders: **[●]**

By:_____
Name:
Title:

[Signature Page to Term Loan Agreement]

APPENDIX A

(Notice Addresses, Principal Offices and Lending Offices)

Loan Parties:

c/o SORRENTO THERAPEUTICS, INC.
Address: 4955 Directors Place, San Diego, CA 92121
Email: hji@sorrentotherapeutics.com
Attention: Chief Executive Officer
with a copy to (which copy shall not constitute notice):

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Attention: Jeff Hartlin, Esq.
Facsimile: (650) 320-1904
Email: jeffhartlin@paulhastings.com
Agent and Initial Lenders:

c/o OAKTREE CAPITAL MANAGEMENT (UK) LLP
Address: Verde, 10 Bressenden Place
London, SW1E 5DH
United Kingdom
Email: ~~amkumar@oaktreecapital.com; oaktreeagency@cortlandglobal.com~~amkumar@oaktreecapital.com; oaktreeagency@cortlandglobal.com
Attention: Aman Kumar

with a copy to (which copy shall not constitute notice):

Oaktree Capital Management, L.P.
333 South Grand Ave., 28th Floor
Los Angeles, CA 90071
Facsimile: (213) 830-6293

Email: mgallegly@oaktreecapital.com
Attention: Mary Gallegly and Legal Department
and with a copy to (which copy shall not constitute notice):

Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attention: Ari B. Blaut, Esq.

Facsimile: (212) 291 9219
Email: blauta@sullcrom.com

APPENDIX B

Closing Date Term Loan Commitments

Name of Lender	Commitment	Pro Rata Share
SC Investments NE Holdings, LLC	$26,972,210.30	26.972 %
SC Investments E Holdings, LLC	$40,027,789.70	40.028 %
Oaktree Strategic Income II, Inc.	$8,000,000.00	8.000 %
OCSL SRNE, LLC	$25,000,000.00	25.000 %
Total	$100,000,000.00	100.000 %

~~**Delayed Draw Term Loan Commitments**~~

~~**Name of Lender**~~	~~**Commitment**~~	~~**Pro Rata Share**~~
~~SC Investments NE Holdings, LLC~~	~~$8,091,663.09~~	~~26.9722 %~~
~~SC Investments E Holdings, LLC~~	~~$12,008,336.91~~	~~40.0278 %~~
~~Oaktree Strategic Income II, Inc.~~	~~$2,400,000.00~~	~~8.0000 %~~
~~OCSL SRNE, LLC~~	~~$7,500,000.00~~	~~25.0000 %~~
~~**Total**~~	~~$30,000,000.00~~	~~100.000 %~~

Early Delayed Draw Term Loan Commitments

Name of Lender	Commitment	Pro Rata Share
SC Investments NE Holdings, LLC	$5,394,442.06	26.9722 %
SC Investments E Holdings, LLC	$8,005,557.94	40.0278 %
Oaktree Strategic Income II, Inc.	$1,600,000.00	8.0000 %
OCSL SRNE, LLC	$5,000,000.00	25.0000 %
Total	$20,000,000.00	100.000 %

Exhibit 21.1

Subsidiaries of Sorrento Therapeutics, Inc.

Name	State or Jurisdiction of Incorporation or Organization
Concortis Biosystems, Corp.	Delaware
Ark Animal Health, Inc.	Delaware
TNK Therapeutics, Inc.	Delaware
BioServ Corporation	Delaware
Scilex Holding Company	Delaware
Semnur Pharmaceuticals, Inc.	Delaware
Scilex Pharmaceuticals Inc.	Delaware
Levena Suzhou Biopharma Co., Ltd.	People’s Republic of China
Sorrento Therapeutics (Shanghai) Co., Ltd.	People’s Republic of China
Nanjing Levena Biopharma Co. Ltd.	People’s Republic of China
Virttu Biologics Limited	England and Wales
Scintilla Health, Inc.	Delaware

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-163670, 333-195487, 333-198307, 333-213130, 333-227305 and 333-234622 on Form S-8 and Registration Statement Nos. 333-192025, 333-212302, 333-214897, 333-217673, 333-220822, 333-221443, 333-223856, 333-223857, 333-228770, 333-229609, 333-232163, 333-234869 and 333-235970 on Form S-3 of our reports dated March 2, 2020, relating to the financial statements of Sorrento Therapeutics, Inc. and subsidiaries (the "Company"), and the effectiveness of Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2019.

/s/ DELOITTE & TOUCHE LLP

San Diego, California
March 2, 2020

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Henry Ji, certify that:

1. I have reviewed this Annual Report on Form 10-K of Sorrento 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.

/s/ Henry Ji, Ph.D.

Henry Ji, Ph.D.
Chairman of the Board of Directors, Chief Executive Officer and President
(Principal Executive Officer)

Dated: March 2, 2020

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
Pursuant to Rule 13a-14(a) adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Jiong Shao, certify that:

1. I have reviewed this Annual Report on Form 10-K of Sorrento 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.

/s/ Jiong Shao

Jiong Shao
Chief Financial Officer
(Principal Financial Officer)

Dated: March 2, 2020

Exhibit 32.1

CERTIFICATIONS

Each of the undersigned, in his capacity as the principal executive officer and principal financial officer of Sorrento Therapeutics, Inc. (the "Company"), as the case may be, hereby certifies, 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), that, to the best of his knowledge:

1. This Annual Report on Form 10-K for the period ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
2. The information contained in this Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period covered by this Annual Report.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission ("SEC") or its staff upon request.

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

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 2nd day of March 2020.

/S/ HENRY JI, PH.D.

Henry Ji, Ph.D.
Chairman of the Board of Directors, Chief Executive Officer and President
(Principal Executive Officer)

/S/ JIONG SHAO

Jiong Shao
Chief Financial Officer
(Principal Financial and Accounting Officer)