
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended **September 30, 2021**

OR

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

For the transition period from _____ to _____

Commission file number **001-34655**

AVEO PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

04-3581650
(I.R.S. Employer
Identification No.)

30 Winter Street, Boston, Massachusetts 02108
(Address of principal executive offices) (Zip Code)

(857) 400-0101

(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 each exchange on which registered
Common Stock, \$0.001 par value	AVEO	Nasdaq Capital Market

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

Number of shares of the registrant's Common Stock, \$0.001 par value, outstanding on November 1, 2021: 34,373,995

AVEO PHARMACEUTICALS, INC.
FORM 10-Q
FOR THE QUARTER ENDED SEPTEMBER 30, 2021

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Cautionary Note Regarding Forward-Looking Statements and Industry Data

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995, which involve risks and uncertainties. All statements other than statements of historical fact contained in this report are statements that could be deemed forward-looking statements, including, without limitation, statements with respect to the plans, strategies and objectives of management for future operations; statements concerning product research, development and commercialization plans, timelines and anticipated results; statements of expectation or belief; statements with respect to clinical trials and studies; statements with respect to the therapeutic potential of product candidates; any expectations of revenue, expenses, earnings or losses from operations, or other financial results; and statements of assumptions underlying any of the foregoing. Without limiting the foregoing, the words “anticipates”, “believes”, “could”, “estimates”, “expects”, “intends”, “may”, “plans”, “seeks”, “will”, “strategy”, “potential”, “should”, “would” and other similar language, whether in the negative or affirmative, are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Forward-looking statements may include, but are not limited to, statements about:

- our plans surrounding the launch and commercialization of FOTIVDA;
- our plans to develop our clinical stage assets and commercialize our product candidates;
- our manufacturing, marketing and sales capabilities and strategy;
- the rate and degree of market acceptance and clinical utility of our products;
- the initiation, timing, progress and results of future clinical trials, and our development programs;
- our ability to secure new collaborations, maintain existing collaborations or obtain additional funding;
- our intellectual property position;
- the potential of ficlatuzumab, AV-380 or other product candidates that we in-license, or may elect to in-license, or may acquire in the future;
- the timing or likelihood of regulatory filings and approvals;
- the implementation of our business model, strategic plans for our business, product candidates and technology;
- our competitive position;
- developments and projections relating to our competitors and our industry;
- impacts resulting from the COVID-19 pandemic and responsive actions relating thereto;
- macroeconomic impacts arising from the duration of the COVID-19 pandemic, including supply chain disruptions;
- our estimates of the period in which we anticipate that existing cash, cash equivalents and investments will enable us to fund our current and planned operations; and
- our estimates regarding expenses, future revenue, capital requirements and needs for additional financing.

Our actual results may differ materially from those indicated by these forward-looking statements as a result of various important factors. We therefore caution you against relying on any of these forward-looking statements. Important factors that could cause actual results to differ materially from those in these forward-looking statements include the factors discussed below under the heading “Risk Factor Summary,” and the risk factors detailed further in Item 1A., “Risk Factors” of Part I of this report and in our U.S. Securities and Exchange Commission reports filed after this report.

This report also includes statistical and other industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties as well as our own estimates. All of the market data used in this report involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such data. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. Our estimates of the potential market opportunities for our product candidates include several key assumptions based on our industry knowledge, industry publications, third-party research and other surveys, which may be based on a small sample size and may fail to accurately reflect market opportunities. While we believe that our internal assumptions are reasonable, no independent source has verified such assumptions.

The forward-looking statements included in this quarterly report represent our estimates as of the filing date of this quarterly report. We specifically disclaim any obligation to update these forward-looking statements in the future. These forward-looking statements should not be relied upon as representing our estimates or views as of any date subsequent to the date of this quarterly report.

Risk Factor Summary

Investment in our securities involves risk. You should carefully consider the following summary of what we believe to be the principle risks facing our business, in addition to the risks described more fully in Item 1A., “Risk Factors” of Part I of this Quarterly Report on Form 10-Q and other information included in this report. The risks and uncertainties described below are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations.

If any of the following risks occur, our business, financial condition and results of operations and future growth prospects could be materially and adversely affected, and the actual outcomes of matters as to which forward-looking statements are made in this report could be materially different from those anticipated in such forward-looking statements.

- We have incurred significant operating losses, anticipate that we will continue to incur significant operating expenses for the foreseeable future and may never generate significant revenue or achieve or sustain profitability.
- We may require substantial additional funding to advance our pipeline of clinical stage assets, and if we are unable to obtain this necessary capital when needed, we could be forced to delay, limit, reduce or terminate our research, product development or commercialization efforts.
- We have only recently transitioned from a development stage biopharmaceutical company to a commercial stage biopharmaceutical company, which may make it difficult for you to evaluate the success of our business to date and to assess our future viability.
- We depend heavily on the success of our commercial product, FOTIVDA, and on our clinical stage assets, including tivozanib (in other indications), ficlatuzumab, AV-380 and AV-203. If we are unable to complete the clinical development of, obtain marketing approval for or successfully commercialize our product candidates, our business will be materially harmed.
- The COVID-19 pandemic has adversely disrupted our ability to commercialize FOTIVDA, to manufacture clinical product and to initiate new trials or complete ongoing clinical trials and may have other adverse effects on our business and operations.
- If we or our collaborators experience delays or difficulties in the enrollment of patients in clinical trials, receipt of necessary regulatory approvals could be delayed or prevented.
- If clinical trials of any product candidates that we, or any collaborators, may develop fail to satisfactorily demonstrate safety and efficacy to the FDA and other regulators, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of these product candidates.
- We face substantial competition from existing approved products and our competitors may also discover, develop or commercialize new competing products before, or more successfully, than we do.
- Adverse events or undesirable side effects caused by, or other unexpected properties of, product candidates that we develop may be identified during development and could delay or prevent their marketing approval or limit their use.
- We rely in part on third parties to produce our preclinical and clinical product candidate supplies and to conduct clinical trials of our internally-developed product candidates, and those third parties may not perform satisfactorily, including by failing to deliver supplies on time or to meet deadlines for the completion of such trials, research or testing.
- We rely on our licensee EUSA, over whom we have little control, for the sales, marketing and distribution efforts associated with the commercialization of FOTIVDA in the countries in the EUSA territory and any failure by EUSA to devote the necessary resources and attention to market and sell FOTIVDA effectively and successfully may materially impact our ability to generate revenue.

- Any failure by a third-party manufacturer or a third-party supplier to timely produce or provide required manufacturing supplies for us or to safely store product candidate supplies and commercial supplies of FOTIVDA may delay or impair our ability to manufacture product, initiate or complete our clinical trials or commercialize our product candidates.
- We may not be successful in establishing or maintaining strategic partnerships to further the development of our therapeutic programs. Additionally, if any of our current or future strategic partners fails to perform its obligations or terminates the partnership, the development and commercialization of the product candidates under such agreement could be delayed or terminated and, such failures or terminations could have a material adverse effect on our operations and business.
- We could be unsuccessful in obtaining or maintaining adequate patent protection for one or more of our product candidates, or the scope of our patent protection could be insufficiently broad, which could result in competition and a decrease in the potential market share for our product candidates.

AVEO PHARMACEUTICALS, INC.

Condensed Consolidated Balance Sheets
(In thousands, except par value amounts)
(Unaudited)

	September 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 68,840	\$ 61,761
Marketable securities	25,176	—
Trade receivables, net	8,303	—
Partnership receivables	1,205	1,197
Inventory	1,252	—
Clinical trial retainers	881	355
Other prepaid expenses and other current assets	2,320	2,195
Total current assets	107,977	65,508
Property and equipment, net	292	343
Operating lease right-of-use asset	560	903
Other assets	258	158
Total assets	\$ 109,087	\$ 66,912
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 4,925	\$ 3,380
Accrued clinical trial costs and contract research	6,534	4,550
Other accrued liabilities	9,484	4,463
Operating lease liability	361	369
Loans payable, net of discount	—	1,056
Deferred revenue	1,072	1,974
Deferred research and development reimbursements	—	164
PIPE Warrant liability	—	199
Other liabilities (Note 6)	—	790
Total current liabilities	22,376	16,945
Loans payable, net of current portion and discount	33,026	12,716
Deferred revenue, non-current	—	578
Operating lease liability, non-current	19	336
Other liabilities, non-current (Note 6)	2,432	1,043
Total liabilities	57,853	31,618
Stockholders' equity:		
Preferred stock, \$.001 par value: 5,000 shares authorized at September 30, 2021 and December 31, 2020; no shares issued and outstanding at each of September 30, 2021 and December 31, 2020	—	—
Common stock, \$.001 par value: 50,000 shares authorized at September 30, 2021 and December 31, 2020; 34,374 shares issued and outstanding at September 30, 2021 and 26,883 issued and outstanding at December 31, 2020	34	27
Additional paid-in capital	718,494	656,472
Accumulated other comprehensive income	(2)	—
Accumulated deficit	(667,292)	(621,205)
Total stockholders' equity	51,234	35,294
Total liabilities and stockholders' equity	\$ 109,087	\$ 66,912

See accompanying notes.

AVEO PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
FOTIVDA U.S. product revenue, net	\$ 14,318	\$ —	\$ 22,119	\$ —
Partnership licensing and royalty revenue	855	3,600	2,530	5,133
	<u>15,173</u>	<u>3,600</u>	<u>24,649</u>	<u>5,133</u>
Operating expenses:				
Cost of products sold	1,744	—	2,704	—
Research and development	7,502	5,860	20,177	18,105
Selling, general and administrative	15,142	5,800	45,162	13,209
	<u>24,388</u>	<u>11,660</u>	<u>68,043</u>	<u>31,314</u>
Loss from operations	(9,215)	(8,060)	(43,394)	(26,181)
Other income (expense), net:				
Interest expense, net	(1,153)	(419)	(2,892)	(1,083)
Change in fair value of PIPE Warrant liability	—	86	199	3,184
	<u>(1,153)</u>	<u>(333)</u>	<u>(2,693)</u>	<u>2,101</u>
Net loss	\$ (10,368)	\$ (8,393)	\$ (46,087)	\$ (24,080)
Net loss per share - basic and diluted	\$ (0.30)	\$ (0.33)	\$ (1.44)	\$ (1.22)
Weighted average number of common shares outstanding	34,374	25,808	32,081	19,773

See accompanying notes.

AVEO PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Comprehensive Income (Loss)
(In thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net loss	\$ (10,368)	\$ (8,393)	\$ (46,087)	\$ (24,080)
Other comprehensive income (loss):				
Unrealized gain (loss) on available-for-sale securities	(2)	2	(2)	1
Comprehensive loss	\$ (10,370)	\$ (8,391)	\$ (46,089)	\$ (24,079)

See accompanying notes.

AVEO PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Stockholders' Equity
(In thousands)
(Unaudited)

	Common Shares		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Par Value				
Balance at December 31, 2020	26,883	\$ 27	\$ 656,472	\$ —	\$ (621,205)	\$ 35,294
Issuance of common stock in a public offering (net of issuance costs of \$3.5 million)	6,900	7	51,711	—	—	51,718
Issuance of common stock from the SVB Leerink sales agreement (net of issuance costs of \$0.1 million)	331	—	3,377	—	—	3,377
Issuance of common stock in connection with warrant exercises	247	—	3,092	—	—	3,092
Stock-based compensation expense related to equity-classified awards	—	—	1,204	—	—	1,204
Net loss	—	—	—	—	(22,122)	(22,122)
Balance at March 31, 2021	<u>34,361</u>	<u>\$ 34</u>	<u>\$ 715,856</u>	<u>\$ —</u>	<u>\$ (643,327)</u>	<u>\$ 72,563</u>
Stock-based compensation expense related to equity-classified awards	—	—	1,169	—	—	1,169
Issuance of common stock under employee stock purchase plan	13	—	68	—	—	68
Net loss	—	—	—	—	(13,597)	(13,597)
Balance at June 30, 2021	<u>34,374</u>	<u>\$ 34</u>	<u>\$ 717,093</u>	<u>\$ —</u>	<u>\$ (656,924)</u>	<u>\$ 60,203</u>
Stock-based compensation expense related to equity-classified awards	—	—	1,401	—	—	1,401
Unrealized gain on available-for-sale investments	—	—	—	(2)	—	(2)
Net loss	—	—	—	—	(10,368)	(10,368)
Balance at September 30, 2021	<u>34,374</u>	<u>\$ 34</u>	<u>\$ 718,494</u>	<u>\$ (2)</u>	<u>\$ (667,292)</u>	<u>\$ 51,234</u>

AVEO PHARMACEUTICALS, INC.
Condensed Consolidated Statements of Stockholders' Equity
(In thousands)
(Unaudited)

	Common Shares		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Par Value				
Balance at December 31, 2019	16,081	\$ 16	\$ 600,451	\$ —	\$ (585,621)	\$ 14,846
Stock-based compensation expense related to equity- classified awards	—	—	543	—	—	543
Net loss	—	—	—	—	(8,381)	(8,381)
Balance at March 31, 2020	16,081	\$ 16	\$ 600,994	\$ —	\$ (594,002)	\$ 7,008
Issuance of common stock in a public offering, excluding to related parties (net of issuance costs of \$3.3 million)	5,221	5	24,074	—	—	24,079
Issuance of common stock in a public offering, to related parties	4,504	5	23,639	—	—	23,644
Stock-based compensation expense related to equity-classified awards	—	—	578	—	—	578
Issuance of common stock under employee stock purchase plan	2	—	18	—	—	18
Change in unrealized gain (loss) on investments	—	—	—	(1)	—	(1)
Net loss	—	—	—	—	(7,306)	(7,306)
Balance at June 30, 2020	25,808	\$ 26	\$ 649,303	\$ (1)	\$ (601,308)	\$ 48,020
Stock-based compensation expense related to equity-classified awards	—	—	594	—	—	594
Change in unrealized gain (loss) on investments	—	—	—	2	—	2
Net loss	—	—	—	—	(8,393)	(8,393)
Balance at September 30, 2020	25,808	\$ 26	\$ 649,897	\$ 1	\$ (609,701)	\$ 40,223

AVEO PHARMACEUTICALS, INC.

Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	For the Nine Months Ended September 30,	
	2021	2020
Operating activities		
Net loss	\$ (46,087)	\$ (24,080)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	51	9
Stock-based compensation	3,774	1,715
Non-cash interest expense	729	314
Non-cash change in fair value of PIPE Warrant liability	(199)	(3,184)
Amortization of premium and discount on investments	50	(99)
Changes in operating assets and liabilities:		
Trade receivables, net	(8,303)	—
Partnership receivables	(8)	579
Inventory	(1,252)	—
Prepaid expenses and other current assets	(651)	(522)
Operating lease right-of-use asset	343	(1,170)
Other non-current assets	(100)	—
Accounts payable	1,544	533
Accrued contract research	1,984	245
Other accrued liabilities	5,021	1,075
Operating lease liability	(8)	436
Deferred revenue	(1,480)	(1,480)
Deferred research and development reimbursements	(164)	147
Operating lease liability, non-current	(317)	379
Net cash used in operating activities	(45,073)	(25,103)
Investing activities		
Purchases of marketable securities	(28,128)	(36,133)
Proceeds from maturities and sales of marketable securities	2,900	25,200
Purchases of property and equipment	—	(219)
Net cash used in investing activities	(25,228)	(11,152)
Financing activities		
Proceeds from issuance of common stock, net of issuance costs	55,095	24,079
Proceeds from issuance of common stock and warrants to related parties	—	23,644
Proceeds from warrant exercises	3,092	—
Proceeds from issuance of stock for stock-based compensation arrangements	68	18
Proceeds from issuance of loan payable	20,000	5,329
Payment on principal of loan payable (Note 6)	—	(6,497)
Payment of loan maturity fees (Note 6)	(790)	—
Payment of debt issuance costs	(85)	(255)
Net cash provided by financing activities	77,380	46,318
Net increase in cash and cash equivalents	7,079	10,063
Cash and cash equivalents at beginning of period	61,761	29,785
Cash and cash equivalents at end of period	\$ 68,840	\$ 39,848
Supplemental cash flow information		
Cash paid for interest	\$ 2,035	\$ 971
Right-of-use asset obtained in exchange for operating lease liabilities	\$ —	\$ 1,225

See accompanying notes.

AVEO Pharmaceuticals, Inc.**Notes to Condensed Consolidated Financial Statements
September 30, 2021****(1) Organization**

AVEO Pharmaceuticals, Inc. (the "Company") is a commercial stage, oncology-focused biopharmaceutical company committed to delivering medicines that provide a better life for patients with cancer. The Company currently markets FOTIVDA® (tivozanib) in the United States. FOTIVDA is the Company's first commercial product and was approved by the U.S. Food and Drug Administration ("FDA") for marketing and sale in the United States on March 10, 2021 for the treatment of adult patients with relapsed or refractory renal cell carcinoma ("RCC") following two or more prior systemic therapies. The Company continues to develop tivozanib in immuno-oncology combinations in RCC and other indications, and has other investigational programs in clinical development.

FOTIVDA is an oral, next-generation vascular endothelial growth factor receptor ("VEGFR") tyrosine kinase inhibitor ("TKI"). The FDA approval of FOTIVDA is based on the Company's pivotal phase 3 randomized, controlled, multi-center, open-label clinical trial comparing tivozanib to an approved therapy, Nexavar® (sorafenib), in RCC patients whose disease had relapsed or become refractory to two or three prior systemic therapies, which the Company refers to as the TIVO-3 trial. The approval is also supported by three additional trials in RCC and includes safety data from over 1,000 clinical trial subjects.

FOTIVDA became commercially available in the United States on March 22, 2021 and is available to patients through a network of specialty pharmacies and distributors. The Company is currently commercializing FOTIVDA in the United States through the support of approximately 65 field-based employees, which includes approximately 50 oncology sales professionals calling on practicing oncologists. The field sales force is supported by the AVEO ACE Patient Support program, an extensive patient and healthcare provider support program designed to optimize patient access and help patients navigate their treatment journey.

Based on FOTIVDA's demonstrated anti-tumor activity, tolerability profile and reduction of regulatory T-cell production, the Company is seeking to advance tivozanib in additional cancer indications with significant unmet medical needs. The Company is studying tivozanib in combination with immune checkpoint inhibitors for the treatment of RCC and hepatocellular carcinoma ("HCC").

The Company opened enrollment for a phase 3 clinical trial (the "TiNivo-2 Trial") in the third quarter of 2021. The TiNivo-2 Trial is a randomized, open-label, controlled, parallel-arm, pivotal phase 3 clinical trial of tivozanib in combination with OPDIVO® (nivolumab), as compared to tivozanib as a monotherapy, in patients with advanced refractory RCC following one or two lines of prior therapy, one of which must include immunotherapy. The Company is the sponsor of the trial and Bristol-Myers Squibb Company ("BMS") is supplying nivolumab, BMS's antibody directed against programmed death-1 ("PD-1") therapy, for the trial. The TiNivo-2 Trial will seek to further understand the activity and tolerability of this combination following prior immunotherapy.

The Company is conducting the DEDUCTIVE trial through a drug supply and cost sharing collaboration with AstraZeneca PLC ("AstraZeneca"). The DEDUCTIVE trial is an open-label, multi-center, randomized phase 1b/2 clinical trial of tivozanib in combination with AstraZeneca's IMFINZI (durvalumab), a human monoclonal antibody directed against programmed death-ligand 1 ("PD-L1"). The DEDUCTIVE trial was amended to include patients with advanced, unresectable HCC who have progressed after first-line bevacizumab and atezolizumab treatment as well as first-line treatment of patients with advanced, unresectable HCC who have not received prior systemic therapy for metastatic disease. Enrollment for the first line cohort of the DEDUCTIVE trial is complete. Enrollment for the second line cohort is ongoing and is expected to be completed in the first half of 2022. The Company expects interim data for the first line cohort to be presented in the first half of 2022 at a scientific meeting.

FOTIVDA, through the Company's partner EUSA Pharma (UK) Limited ("EUSA"), is also approved in the European Union (the "EU"), New Zealand and South Africa and is reimbursed in the United Kingdom, Germany, Spain and certain other countries in EUSA's territory. FOTIVDA is approved in the EU for the first-line treatment of adult patients with advanced RCC and for adult patients who are VEGFR and mTOR pathway inhibitor-naïve following disease progression after one prior treatment with cytokine therapy for advanced RCC. FOTIVDA has been commercially available in the EU since 2017. EUSA is working to secure reimbursement approval in and commercially launch FOTIVDA in

additional countries in the EUSA territory. However, there is significant competition in the first-line RCC setting in the EU due to the approval of several immunotherapy combinations which have become a standard of care and impacted the market opportunity for monotherapy treatments. EUSA has reported to the Company that, to date, it has not experienced a decrease in sales trends or interruptions in supply or distribution of FOTIVDA during the COVID-19 pandemic; however, the future impact of the COVID-19 pandemic on FOTIVDA sales is difficult to predict.

The Company is also seeking to advance its pipeline of three wholly owned humanized immunoglobulin G1 (“IgG1”) monoclonal antibody product candidates, ficlatuzumab, AV-380 and AV-203, and one IgG1 antibody preclinical product candidate, AV-353.

Ficlatuzumab is a potent humanized IgG1 monoclonal antibody that targets hepatocyte growth factor (“HGF”). The Company has previously reported promising early clinical data on ficlatuzumab in squamous cell carcinoma of the head and neck (“HNSCC”), pancreatic cancer and acute myeloid leukemia (“AML”).

In June 2021, the Company announced results from the randomized phase 2 confirmatory study of ficlatuzumab (the “Phase 2 HNSCC Trial”), in combination with cetuximab, an epidermal growth factor receptor (“EGFR”) targeted antibody, in patients with metastatic HNSCC who relapsed or were refractory to prior immunotherapy, chemotherapy and cetuximab (pan-refractory).

The Company continues to evaluate opportunities for the further clinical development of ficlatuzumab, including a potential registrational clinical trial of ficlatuzumab in the human papillomavirus negative (“HPV-”) HNSCC patient population. In 2020, the Company contracted with a contract manufacturing organization (“CMO”) to manufacture the clinical supply for this potential registrational clinical trial of ficlatuzumab. However, a shortage of required key raw materials and manufacturing supplies also used in COVID-19 vaccine manufacturing has delayed the delivery of the clinical supply of ficlatuzumab. Based on the Company’s ongoing discussions with its CMO, the Company expects the key required raw materials and manufacturing supplies for ficlatuzumab to become available in the second quarter of 2022 and the Company has secured a manufacturing slot with its CMO to meet this timeline.

In September 2021, the FDA granted Fast Track designation for the investigation of ficlatuzumab and ERBITUX[®] (cetuximab) for the treatment of patients with relapsed or recurrent HNSCC. Assuming the timely manufacturing of ficlatuzumab, the availability of financial resources or strategic partner funding and the continued discussions with the FDA to finalize the trial design under the Fast Track designation, the Company expects to initiate a potential registrational clinical trial of ficlatuzumab and cetuximab in the HPV-, recurrent or metastatic HNSCC (“R/R HNSCC”) patient population in the first half of 2023.

AV-380 is a potent humanized IgG1 monoclonal antibody that targets growth differentiation factor 15 (“GDF15”). In December 2020, the FDA approved the Company’s investigational new drug application (“IND”) for AV-380 for the potential treatment of cancer cachexia. In the first quarter of 2021, the Company initiated a phase 1 clinical trial in healthy volunteers and targeted enrollment for the trial was reached in October 2021. The Company expects data from this phase 1 clinical trial to become available in the first half of 2022. The Company plans to initiate a phase 1b clinical trial in cancer patients in the middle of 2022.

AV-203 is a potent humanized IgG1 monoclonal antibody that targets ErbB3 (also known as HER3) to which the Company regained worldwide rights in September 2021. The Company is exploring AV-203 as a potential oncology treatment.

AV-353 is a preclinical selective and potent IgG1 antibody that targets the Notch 3 pathway. The Company is exploring AV-353 as a potential oncology treatment.

As used throughout these condensed consolidated financial statements, the terms “AVEO,” and the “Company” refer to the business of AVEO Pharmaceuticals, Inc. and its three wholly-owned subsidiaries, AVEO Pharma Limited, AVEO Pharma (Ireland) Limited and AVEO Securities Corporation.

Liquidity and Going Concern

In accordance with Accounting Standards Update (“ASU”) No. 2014-15, *Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern* (Subtopic 205-40), the Company has evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the consolidated financial statements are issued. The Company’s financial

statements have been prepared on the basis of continuity of operations, realization of assets and the satisfaction of liabilities in the ordinary course of business. Through September 30, 2021, the Company has financed its operations primarily through private placements and public offerings of its common stock, license fees, milestone payments and research and development funding from strategic partners, FOTIVDA commercial sales receipts and debt facilities. The Company has devoted substantially all of its resources to its drug development efforts, comprising research and development, manufacturing, conducting clinical trials for its product candidates, commercializing FOTIVDA, protecting its intellectual property and general and administrative functions relating to these operations.

The future success of the Company is dependent on its ability to commercialize FOTIVDA in the United States and to develop its portfolio assets and, ultimately, upon the Company's ability to create shareholder value. On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies. The Company's future product revenues will depend upon the size of markets in which FOTIVDA, and any future products, have received approval, and its ability to achieve sufficient market acceptance, reimbursement from third-party payors and adequate market share for FOTIVDA and any future products in those markets. The likelihood of the Company's long-term success must be considered in light of the expenses, difficulties and potential delays that may be encountered in the development and commercialization of new pharmaceutical products, competitive factors in the marketplace and the complex regulatory environment in which the Company operates. Absent the realization of sufficient revenues from product sales to support the Company's cost structure, the Company may never attain or sustain profitability.

The Company has incurred recurring losses and cash outflows from operations since its inception, including an accumulated deficit of \$667.3 million as of September 30, 2021. The Company anticipates that it will continue to incur significant operating expenses for the foreseeable future as it commercializes FOTIVDA in the United States and continues its planned development activities for its clinical stage assets. The Company may require substantial additional funding to continue to advance its pipeline of clinical stage assets, and the timing and nature of these activities will be conducted subject to the availability of sufficient financial resources, principally product sales of FOTIVDA in the United States.

As of November 8, 2021, the date of issuance of these consolidated financial statements, the Company expects that its cash, cash equivalents and marketable securities of \$94.0 million as of September 30, 2021, along with net product revenues from the commercial launch of FOTIVDA in the United States, will be sufficient to fund its current operations for more than twelve months from the date of filing this Quarterly Report on Form 10-Q.

Management's expectations with respect to its ability to fund current planned operations is based on estimates that are subject to risks and uncertainties, including, without limitation, risks related to its ability to generate product revenue from sales of FOTIVDA in the United States, which became commercially available in the United States on March 22, 2021. If actual results are different from management's estimates, the Company may need to seek additional strategic or financing opportunities sooner than would otherwise be expected. However, there is no guarantee that any of these strategic or financing opportunities would be executed or executed on favorable terms, and some could be dilutive to existing stockholders. If the Company is unable to obtain additional funding on a timely basis, it may be forced to significantly curtail, delay or discontinue one or more of its planned research or development programs or be unable to expand its operations or otherwise capitalize on its commercialization of its product and product candidates.

(2) Basis of Presentation

These consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, AVEO Pharma Limited, AVEO Pharma (Ireland) Limited and AVEO Securities Corporation. The Company has eliminated all significant intercompany accounts and transactions in consolidation.

The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring accruals and revisions of estimates, considered necessary for a fair presentation of the condensed consolidated financial statements have been included. Interim results for the three and nine months ended September 30, 2021 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2021 or any other future period.

The information presented in the condensed consolidated financial statements and related footnotes at September 30, 2021, and for the three and nine months ended September 30, 2021 and 2020, is unaudited, and the

condensed consolidated balance sheet amounts and related footnotes as of December 31, 2020 have been derived from the Company's audited financial statements. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020, which was filed with the U.S. Securities and Exchange Commission ("SEC") on March 16, 2021.

(3) Significant Accounting Policies

Revenue Recognition

Under Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers*, the Company recognizes revenue when its customers obtain control of promised goods or services, in an amount that reflects the consideration which the Company determines it expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligation(s) in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligation(s) in the contract; and (v) recognize revenue when (or as) the Company satisfies its performance obligation(s). As part of the accounting for these arrangements, the Company must make significant judgments, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each performance obligation.

Net Product Revenue

On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC after two prior systemic therapies. FOTIVDA became commercially available on March 22, 2021. FOTIVDA is the Company's first commercial product. The Company sells its products principally through a limited distribution network comprised of two specialty pharmacies, Biologics and Onco360, and the following specialty distributors: Amerisource Specialty Distribution, Oncology Supply, McKesson Plasma and Biologics, McKesson Specialty and Cardinal Specialty (collectively with the specialty pharmacies, the "Customers" and each a "Customer"). These Customers subsequently resell the Company's products to health care providers and patients. In addition to distribution agreements with Customers, the Company enters into arrangements with health care providers and payors that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of the Company's products. Revenues from product sales are recognized when the Customer obtains control of the Company's product, which occurs at a point in time, typically upon delivery to the Customer.

Product Sales Discounts and Allowances

The Company records revenues from product sales at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established primarily from discounts, chargebacks, rebates, co-pay assistance, returns and other allowances that are offered within contracts between the Company and its Customers, health care providers, payors and other indirect customers relating to the sales of its products. These reserves are based on the amounts earned or to be claimed on the related sales and are classified as reductions of accounts receivable (if the amount is deductible by the Customer from payments to the Company) or a current liability (if the amount is payable by the Company to a third party or Customer). Where appropriate, these estimates take into consideration a range of possible outcomes that are probability-weighted for relevant factors such as current contractual and statutory requirements, specific known market events and trends, industry data, forecasted Customer buying and payment patterns, and the Company's historical experience that will develop over time as FOTIVDA is the Company's first commercial product. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of its contracts. The amount of variable consideration that is included in the transaction price may be constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenues and earnings in the period such variances become known.

Chargebacks: Chargebacks are discounts that occur when contracted customers purchase directly from a specialty distributor. Contracted customers, which currently consist primarily of Public Health Service institutions, Federal government entities purchasing via the Federal Supply Schedule, Group Purchasing Organizations and health maintenance organizations, generally purchase the product at a discounted price. The specialty distributor, in turn, charges back to the Company the difference between the price initially paid by the specialty distributor and the discounted price paid to the

specialty distributor by its contracted customer. The allowance for chargebacks is based on actual chargebacks received and an estimate of sales by the specialty distributor to its contracted customers.

Discounts for Prompt Payment: The Customers receive a discount of 2% for prompt payment. The Company expects its Customers will earn 100% of their prompt payment discounts and, therefore, the Company deducts the full amount of these discounts from total product sales when revenues are recognized.

Rebates: Allowances for rebates include mandated discounts under the Medicaid Drug Rebate Program, Medicare Part D Coverage Gap Discounts Program, other government programs and commercial contracts. Rebate amounts owed after the final dispensing of the product to a benefit plan participant are based upon contractual agreements or legal requirements with public sector benefit providers, such as Medicaid. In addition, in the United States during 2020, the Medicare Part D prescription drug benefit mandated participating manufacturers to fund 70% of the Medicare Part D insurance coverage gap for prescription drugs sold to eligible patients. The allowance for rebates is based on statutory or contractual discount rates and expected utilization. The Company's estimates for the expected utilization of rebates are based on Customer and payer data received from the specialty pharmacies and distributors and historical utilization rates that will develop over time as FOTIVDA is the Company's first commercial product. Rebates are generally invoiced by the payor and paid in arrears, such that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's shipments to the Customers, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, the Company may need to adjust its accruals, which would affect net product revenues in the period of adjustment.

Co-payment Assistance: Patients who have commercial insurance and meet certain eligibility requirements may receive co-payment assistance. The Company accrues a liability for co-payment assistance based on actual program participation and estimates of program redemption using Customer data provided by the third party that administers the copay program.

Other Customer Credits: The Company pays fees to its Customers for account management, data management and other administrative services. To the extent the services received are distinct from the sale of products to its Customers, the Company classifies these payments in selling, general and administrative expenses in its Consolidated Statements of Income.

The following table summarizes net product revenues for FOTIVDA in the United States earned in the three and nine months ended September 30, 2021 and 2020, respectively (in thousands).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Product revenues:				
Gross product revenues	\$ 16,978	\$ —	\$ 26,227	\$ —
Discounts and allowances	(2,660)	—	(4,108)	—
Net product revenues	\$ 14,318	\$ —	\$ 22,119	\$ —

The following table summarizes the percentage of total product revenues for FOTIVDA in the United States by any Customer who individually accounted for 10% or more of total product revenues earned in the three and nine months ended September 30, 2021 and 2020, respectively:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
OncoMed Specialty, LLC (Onco360)	21 %	—	23 %	—
Affiliates of McKesson Corporation	45 %	—	43 %	—
Affiliates of AmerisourceBergen Corporation	22 %	—	23 %	—
Affiliates of Cardinal Health Specialty	12 %	—	11 %	—
	100 %	—	100 %	—

Product Sales Discounts and Allowances

The activities and ending allowance balances for each significant category of discounts and allowances for FOTIVDA (which constitute variable consideration) for the nine months ended September 30, 2021 were as follows (in thousands):

	Chargebacks, Discounts for Prompt Pay and Other Allowances	Rebates, Customer Fees / Credits and Co-Pay Assistance	Totals
Balance at December 31, 2020	\$ —	\$ —	\$ —
Provision related to sales made in:			
Current period	\$ 2,358	\$ 1,750	\$ 4,108
Prior periods	—	—	—
Payments and customer credits issued	(1,392)	(570)	(1,962)
Balance at September 30, 2021	<u>\$ 966</u>	<u>\$ 1,180</u>	<u>\$ 2,146</u>

The allowances for chargebacks, discounts for prompt payment and other allowances are recorded as a reduction of trade receivables, net, and the remaining reserves are recorded as rebates and fees due to customers in the accompanying Consolidated Balance Sheets.

Collaboration Revenues

The Company's historical revenues have been generated primarily through collaborative research, development and commercialization agreements. The terms of these agreements generally contain multiple promised goods and services, which may include (i) licenses, or options to obtain licenses, to the Company's technology, (ii) research and development activities to be performed on behalf of the collaborative partner and (iii) in certain cases, services in connection with the manufacturing of preclinical and clinical material. Payments to the Company under these arrangements typically include one or more of the following: non-refundable, upfront license fees; option exercise fees; funding of research and/or development efforts; milestone payments; and royalties on future product sales.

Collaboration Arrangements Within the Scope of ASC 808, Collaborative Arrangements

The Company analyzes its collaboration arrangements to assess whether such arrangements involve joint operating activities performed by parties that are both active participants in the activities and exposed to significant risks and rewards dependent on the commercial success of such activities and are therefore within the scope of ASC Topic 808, *Collaborative Arrangements* ("ASC 808"). This assessment is performed throughout the life of the arrangement based on changes in the responsibilities of all parties in the arrangement. For collaboration arrangements that are deemed to be within the scope of ASC 808, the Company first determines which elements of the collaboration are deemed to be within the scope of ASC 808 and those that are more reflective of a vendor-customer relationship and therefore within the scope of ASC 606. The Company's policy is generally to recognize amounts received from collaborators in connection with joint operating activities that are within the scope of ASC 808 as a reduction in research and development expense.

Arrangements Within the Scope of ASC 606, Revenue from Contracts with Customers

Once a contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within the contract and determines those that are performance obligations. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. The Company assesses if these options provide a material right to the customer and if so, they are considered performance obligations. The exercise of a material right is accounted for as a contract modification for accounting purposes.

The Company assesses whether each promised good or service is distinct for the purpose of identifying the performance obligations in the contract. This assessment involves subjective determinations and requires management to make judgments about the individual promised goods or services and whether such are separable from the other aspects of the contractual relationship. Promised goods and services are considered distinct provided that: (i) the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer (that is, the good or service is capable of being distinct) and (ii) the entity's promise to transfer the good or service to the customer

is separately identifiable from other promises in the contract (that is, the promise to transfer the good or service is distinct within the context of the contract). In assessing whether a promised good or service is distinct, the Company considers factors such as the research, manufacturing and commercialization capabilities of the collaboration partner and the availability of the associated expertise in the general marketplace. The Company also considers the intended benefit of the contract in assessing whether a promised good or service is separately identifiable from other promises in the contract. If a promised good or service is not distinct, an entity is required to combine that good or service with other promised goods or services until it identifies a bundle of goods or services that is distinct.

The transaction price is then determined and allocated to the identified performance obligations in proportion to their standalone selling prices (“SSP”) on a relative SSP basis. SSP are determined at contract inception and is not updated to reflect changes between contract inception and when the performance obligations are satisfied. Determining SSP for performance obligations requires significant judgment. In developing SSP for a performance obligation, the Company considers applicable market conditions and relevant entity-specific factors, including factors that were contemplated in negotiating the agreement with the customer and estimated costs. The Company validates SSP for performance obligations by evaluating whether changes in the key assumptions used to determine SSP will have a significant effect on the allocation of arrangement consideration between multiple performance obligations.

If the consideration promised in a contract includes a variable amount, the Company estimates the amount of consideration to which it will be entitled in exchange for transferring the promised goods or services to a customer. The Company determines the amount of variable consideration by using the expected value method or the most likely amount method. The Company includes the unconstrained amount of estimated variable consideration in the transaction price. The amount included in the transaction price is constrained to the amount for which it is probable that a significant reversal of cumulative revenue recognized will not occur. At the end of each subsequent reporting period, the Company re-evaluates the estimated variable consideration included in the transaction price and any related constraint, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis in the period of adjustment.

In determining the transaction price, the Company adjusts consideration for the effects of the time value of money if the timing of payments provides the Company with a significant benefit of financing. The Company does not assess whether a contract has a significant financing component if the expectation at contract inception is such that the period between payment by the licensees and the transfer of the promised goods or services to the licensees will be one year or less. The Company assessed each of its revenue generating arrangements in order to determine whether a significant financing component exists and concluded that a significant financing component does not exist in any of its arrangements.

The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied at a point in time or over time, and if over time based on the use of an output or input method.

Licenses of Intellectual Property: The terms of the Company’s license agreements include the license of functional intellectual property, given the functionality of the intellectual property is not expected to change substantially as a result of the Company’s ongoing activities. If the license to the Company’s intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from the portion of the transaction price allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises (that is, for licenses that are not distinct from other promised goods and services in an arrangement), the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

Research and Development Funding: Arrangements that include payment for research and development services are generally considered to have variable consideration. If and when the Company assesses the payment for these services is no longer subject to the constraint on variable consideration, the related revenue is included in the transaction price.

Milestone payments: At the inception of each arrangement that includes non-refundable payments for contingent milestones, including preclinical research and development, clinical development and regulatory, the Company evaluates whether the milestones are considered probable of being achieved and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur,

the associated milestone value is included in the transaction price. Milestone payments that are not within the control of the Company or the licensee, such as regulatory approvals, are not considered probable of being achieved until those approvals are received. At the end of each reporting period, the Company re-evaluates the probability of the achievement of contingent milestones and the likelihood of a significant reversal of such milestone revenue, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect collaboration and licensing revenue in the period of adjustment. This quarterly assessment may result in the recognition of revenue related to a contingent milestone payment before the milestone event has been achieved.

Royalties: For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (i) when the related sales occur or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied).

The following table summarizes the total collaboration revenues earned in the three and nine months ended September 30, 2021 and 2020, respectively, by partner (in thousands). Refer to Note 4, “*Collaborations and License Agreements*” regarding specific details.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
EUSA	\$ 855	\$ 800	\$ 2,530	\$ 2,333
KKC	—	2,800	—	2,800
Total	\$ 855	\$ 3,600	\$ 2,530	\$ 5,133

Trade Receivables

Trade receivables, net, includes amounts billed to Customers for product sales of FOTIVDA. The Company records trade receivables net of chargebacks, cash discounts for prompt payment and any allowances for credit losses. The Company considers its historical losses, if any, adjusted to account for current conditions, and reasonable and supportable forecasts of future economic conditions affecting its customers to estimate credit losses. The Customers are specialty pharmacies and specialty distributors, and accordingly, the Company considers the risk of potential credit losses to be low.

Cost of Products Sold

Cost of products sold is related to our product revenues for FOTIVDA and consists primarily of tiered royalty payments the Company is required to pay to Kyowa Kirin Co. (“KKC”) on all net sales of tivozanib in the Company’s North American territory, which range from the low to mid-teens as a percentage of net sales. Refer to Note 4, “*Collaborations and License Agreements*” regarding specific details. Cost of products sold also consists of shipping and other third-party logistics and distribution costs for the Company’s products. The Company considered regulatory approval of product candidates to be uncertain and product manufactured prior to regulatory approval may not have been sold unless regulatory approval was obtained. As such, the manufacturing costs for FOTIVDA incurred prior to regulatory approval were not capitalized as inventory, but were expensed as research and development costs.

Research and Development Expenses

Research and development expenses are charged to expense as incurred. Research and development expenses consist of costs incurred in performing research and development activities, including (i) internal costs for salaries, bonuses, benefits, stock-based compensation, research-related overhead and allocated expenses for facilities and information technology, and (ii) external costs for clinical trials, drug manufacturing and distribution, preclinical studies, upfront license payments, milestones and sublicense fees related to in-licensed products and technology, consultants and other contracted services.

Expired Warrants Issued in Connection with Private Placement – Expiration Date of May 16, 2021

In May 2016, the Company issued warrants to purchase an aggregate of 1,764,242 shares of common stock in connection with a private placement financing and recorded the warrants as a liability (the “PIPE Warrants”). The remaining 1,683,933 PIPE Warrants expired on May 16, 2021, as scheduled five years from the date of issuance. The

Company accounts for warrant instruments that either conditionally or unconditionally obligate the issuer to transfer assets as liabilities regardless of the timing of the redemption feature or price, even though the underlying shares may be classified as permanent or temporary equity. Refer to Note 7, “Common Stock—Private Placement – May 2016” for further discussion of the private placement financing.

The PIPE Warrants contained a provision giving the warrant holder the option to receive cash, equal to the fair value of the remaining unexercised portion of the warrant, as cash settlement in the event that there had been a fundamental transaction (contractually defined to include various merger, acquisition or stock transfer activities). Due to this provision, ASC 480, *Distinguishing Liabilities from Equity* required that these warrants be classified as a liability and not as equity. Accordingly, the Company recorded a warrant liability in the amount of approximately \$9.3 million upon issuance of the PIPE Warrants. The fair value of these warrants had been determined using the Black-Scholes pricing model. These warrants were subject to revaluation at each balance sheet date and any changes in fair value were recorded as a non-cash gain or (loss) in the Statement of Operations as a component of other income (expense), net until the expiration of the warrants.

The Company recorded no loss and a non-cash gain of approximately \$0.2 million in the three and nine months ended September 30, 2021, respectively, in its Statement of Operations attributable to the decrease in fair value of the warrant liability that resulted from the expiration of the PIPE Warrants on May 16, 2021.

The Company recorded non-cash gains of approximately \$0.1 million and \$3.2 million in the three and nine months ended September 30, 2020, respectively, in its Statement of Operations attributable to the decreases in the fair value of the warrant liability that resulted from changes in the Company’s stock price as of September 30, 2020 relative to prior periods, decreases in the Company’s stock volatility rate and a shorter remaining term as the PIPE Warrants approached their expiration in May 2021. No PIPE Warrants were exercised during the three and nine months ended September 30, 2021 and 2020.

The following table rolls forward the fair value of the Company’s PIPE Warrant liability, the fair value of which is determined by Level 3 inputs for the nine months ended September 30, 2021 (in thousands):

Fair value at January 1, 2021	\$	199
Decrease in fair value		(199)
Fair value at September 30, 2021	\$	—

The key assumptions used to value the PIPE Warrants were as follows:

	Issuance	December 31, 2020
Expected price volatility	76.25%	56.79%
Expected term (in years)	5.00	0.50
Risk-free interest rates	1.22%	0.09%
Stock price	\$ 8.90	\$ 5.77
Dividend yield	—	—

Cash, Cash Equivalents and Marketable Securities

The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase and an investment in a United States government money market fund to be cash equivalents. Changes in the balance of cash and cash equivalents may be affected by changes in investment portfolio maturities, as well as actual cash disbursements to fund operations.

The Company’s cash is deposited in highly-rated financial institutions in the United States. The Company invests in United States government money market funds, high-grade, short-term commercial paper, corporate bonds and other United States government agency securities, which management believes are subject to minimal credit and market risk. The carrying values of the Company’s cash and cash equivalents approximate fair value due to their short-term maturities.

The Company does not have any restricted cash balances.

Marketable Securities

Marketable securities consist primarily of investments which have expected average maturity dates in excess of three months. The Company invests in high-grade corporate obligations, including commercial paper, and United States government and government agency obligations that are classified as available-for-sale. Since these securities are available to fund current operations they are classified as current assets on the consolidated balance sheets.

Marketable securities are stated at fair value, including accrued interest, with their unrealized gains and losses included as a component of accumulated other comprehensive income or loss, which is a separate component of stockholders' equity. The fair value of these securities is based on quoted prices and observable inputs on a recurring basis. The cost of marketable securities is adjusted for amortization of premiums and accretion of discounts, with such amortization and accretion recorded as a component of interest expense, net. Realized gains and losses are determined on the specific identification method. Unrealized gains and losses are included in other comprehensive loss until realized, at which point they would be recorded as a component of interest expense, net.

Below is a summary of cash, cash equivalents and marketable securities at September 30, 2021 and December 31, 2020 (in thousands):

	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
September 30, 2021				
Cash and cash equivalents:				
Cash and money market funds	\$ 68,840	\$ —	\$ —	\$ 68,840
Total cash and cash equivalents	68,840	—	—	68,840
Marketable securities:				
Corporate debt securities due within 1 year	\$ 25,178	\$ —	\$ (2)	\$ 25,176
Total marketable securities	25,178	—	(2)	25,176
Total cash, cash equivalents and marketable securities	\$ 94,018	\$ —	\$ (2)	\$ 94,016
December 31, 2020				
Cash and cash equivalents:				
Cash and money market funds	\$ 61,761	\$ —	\$ —	\$ 61,761
Total cash, cash equivalents and marketable securities	\$ 61,761	\$ —	\$ —	\$ 61,761

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to credit risk primarily consist of cash and cash equivalents, marketable securities and accounts receivable. The Company maintains deposits in highly-rated, federally-insured financial institutions in excess of federally insured limits. The Company's investment strategy is focused on capital preservation. The Company invests in instruments that meet the high credit quality standards outlined in the Company's investment policy. This policy also limits the amount of credit exposure to any one issue or type of instrument.

The Company's trade receivables, net, includes amounts billed to the Customers for product sales of FOTIVDA. The Customers are a limited group of specialty pharmacies and specialty distributors, and accordingly, the Company considers the risk of potential credit losses to be low.

The Company's partnership receivables include amounts due to the Company from licensees and collaborators. The Company has not experienced any material losses related to partnership receivables from individual licensees or collaborators.

Fair Value Measurements

The fair value of the Company's financial assets and liabilities reflects the Company's estimate of amounts that it would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of its assets and liabilities, the Company seeks to maximize the use of observable inputs (market data obtained from sources independent from the Company) and to minimize the use of unobservable inputs (the Company's assumptions about how market participants would price assets and liabilities). The following fair value hierarchy is used to classify assets and liabilities based on the observable inputs and unobservable inputs used in order to value the assets and liabilities:

- Level 1. Quoted prices in active markets for identical assets or liabilities. An active market for an asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis.
- Level 2. Observable inputs other than Level 1 inputs. Examples of Level 2 inputs include quoted prices in active markets for similar assets or liabilities and quoted prices for identical assets or liabilities in markets that are not active.
- Level 3. Unobservable inputs based on the Company's assessment of the assumptions that market participants would use in pricing the asset or liability.

Financial assets and liabilities are classified in their entirety within the fair value hierarchy based on the lowest level of input that is significant to the fair value measurement. The Company measures the fair value of its marketable securities by taking into consideration valuations obtained from third-party pricing sources. The pricing services utilize industry standard valuation models, including both income and market-based approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. These inputs include reported trades of and broker-dealer quotes on the same or similar securities, issuer credit spreads, benchmark securities and other observable inputs.

As of September 30, 2021, the Company had financial assets valued based on Level 1 inputs consisting of cash and cash equivalents in a United States government money market fund and had financial assets based on Level 2 inputs consisting of high-grade debt securities, including commercial paper. During the three and nine months ended September 30, 2021, the Company did not have any transfers of financial assets between Levels 1 and 2.

As of September 30, 2021, the Company did not have any financial liabilities recorded at fair value.

The fair value of the Company's loans payable at September 30, 2021 and December 31, 2020 approximates its carrying value, computed pursuant to a discounted cash flow technique using a market interest rate and is considered a Level 3 fair value measurement. The effective interest rate, which reflects the current market rate, considers the loan issuance costs and the deferred financing charge.

The following table summarizes the financial assets and liabilities measured at fair value on a recurring basis at September 30, 2021 and December 31, 2020 (in thousands):

	Fair Value Measurements as of September 30, 2021			
	Level 1	Level 2	Level 3	Total
Financial assets carried at fair value:				
Cash and money market funds	\$ 68,840	\$ —	\$ —	\$ 68,840
Total cash and cash equivalents	\$ 68,840	\$ —	\$ —	\$ 68,840
Marketable securities:				
Corporate debt securities due within 1 year	\$ —	\$ 25,176	\$ —	\$ 25,176
Total marketable securities	\$ —	\$ 25,176	\$ —	\$ 25,176
Total cash, cash equivalents and marketable securities	\$ 68,840	\$ 25,176	\$ —	\$ 94,016

	Fair Value Measurements as of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Financial assets carried at fair value:				
Cash and money market funds	\$ 61,761	\$ —	\$ —	\$ 61,761
Total cash, cash equivalents and marketable securities	\$ 61,761	\$ —	\$ —	\$ 61,761
Financial liabilities carried at fair value:				
Total PIPE Warrant liability	\$ —	\$ —	\$ 199	\$ 199

Basic and Diluted Net Loss per Common Share

Basic net income (loss) per share attributable to the Company's common stockholders is based on the weighted-average number of common shares outstanding during the period. Diluted net income (loss) per share attributable to the Company's common stockholders is based on the weighted-average number of common shares outstanding during the period plus additional weighted-average common equivalent shares outstanding during the period when the effect is dilutive.

For the three and nine months ended September 30, 2021 and 2020, diluted net loss per share is the same as basic net loss per share as the inclusion of weighted-average shares of common stock issuable upon the exercise of outstanding stock options and warrants until the scheduled expirations of the Offering Warrants on April 8, 2021 and the PIPE Warrants on May 16, 2021 would be anti-dilutive.

The following table summarizes outstanding securities not included in the computation of diluted net loss per common share as the effect would have been anti-dilutive for the three and nine months ended September 30, 2021 and 2020, respectively (in thousands):

	Outstanding at September 30,	
	2021	2020
Stock options outstanding	3,078	1,691
Offering Warrants outstanding (warrants expired April 8, 2021)	—	2,500
PIPE Warrants outstanding (warrants expired May 16, 2021)	—	1,684
Total	3,078	5,875

Stock-Based Compensation

Under the Company's stock-based compensation programs, the Company periodically grants stock options and restricted stock to employees, directors and nonemployee consultants. The Company also issues shares under an employee stock purchase plan. The fair value of each award is recognized in the Company's statements of operations over the requisite service period for such award.

Awards that vest as the recipient provides service are expensed on a straight-line basis over the requisite service period. The Company uses the Black-Scholes option pricing model to value its stock option awards without market conditions, which requires the Company to make certain assumptions regarding the expected volatility of its common stock price, the expected term of the option grants, the risk-free interest rate and the dividend yield with respect to its common stock. The Company calculates volatility using its historical stock price data. Due to the lack of the Company's own historical data, the Company elected to use the "simplified" method for "plain vanilla" options to estimate the expected term of the Company's stock option grants. Under this approach, the weighted-average expected life is presumed to be the average of the vesting term and the contractual term of the option. The risk-free interest rate used for each grant is based on the United States Treasury yield curve in effect at the time of grant for instruments with a similar expected life. The Company utilizes a dividend yield of zero based on the fact that the Company has never paid cash dividends and has no present intention to pay cash dividends.

The fair value of equity-classified awards to employees and directors is measured at fair value on the date the awards are granted. During the three and nine months ended September 30, 2021 and 2020, the Company recorded the following stock-based compensation expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Research and development	\$ 314	\$ 123	\$ 958	\$ 363
Selling, general and administrative	\$ 1,087	\$ 471	\$ 2,816	\$ 1,352
Total	\$ 1,401	\$ 594	\$ 3,774	\$ 1,715

Income Taxes

The Company provides for income taxes using the asset-liability method. Under this method, deferred tax assets and liabilities are recognized based on differences between financial reporting and tax bases of assets and liabilities, and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company calculates its provision for income taxes on ordinary income based on its projected annual tax rate for the year. Uncertain tax positions are recognized if the position is more-likely-than-not to be sustained upon examination by a tax authority. Unrecognized tax benefits represent tax positions for which reserves have been established. As of September 30, 2021, the Company is forecasting an effective tax rate of 0% for the year ending December 31, 2021. The Company maintains a full valuation allowance on all deferred tax assets.

Segment and Geographic Information

Operating segments are defined as components of an enterprise engaging in business activities for which discrete financial information is available and regularly reviewed by the chief operating decision maker in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment principally in the United States. As of September 30, 2021, the Company has no net assets located outside of the United States.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, the assessment of the Company's ability to continue as a going concern and the reported amounts of revenues and expenses during the reporting periods. Significant items subject to such estimates and assumptions include revenue recognition, clinical trial costs and contract research accruals, measurement of trade receivables net, measurement of stock-based compensation and estimates of the Company's capital requirements over the next twelve months from the date of issuance of the consolidated financial statements. The Company bases its estimates on historical experience and various other assumptions that management believes to be reasonable under the circumstances. Material changes in these estimates could occur in the future. Changes in estimates are recorded or reflected in the Company's disclosures in the period in which they become known. Actual results could differ from those estimates if past experience or other assumptions do not turn out to be substantially accurate.

Accrued Clinical Trial Costs and Contract Research Liabilities

During each of the three and nine months ended September 30, 2021 and 2020, the Company had arrangements with multiple contract research organizations ("CROs") whereby these organizations commit to performing services for the Company over multiple reporting periods. The Company recognizes the expenses associated with these arrangements based on its expectation of the timing of the performance of components under these arrangements by these organizations. Generally, these components consist of the costs of setting up the trial, monitoring the trial, closing the trial and preparing the resulting data. Costs related to patient enrollment in clinical trials are accrued as patients are enrolled in the trial.

In addition to fees earned by the CROs to manage the Company's clinical trials, the CROs are also responsible for managing payments to the clinical trial sites on the Company's behalf. There can be significant lag time in clinical trial sites invoicing the CROs. The date on which services are performed, the level of services performed and the cost of such services are often determined based on subjective judgments. The Company makes these judgments based upon the facts

and circumstances known to it, such as the terms of the contract and its knowledge of activity that has been incurred, including the number of active clinical sites, the number of patients enrolled, the activities to be performed for each patient, including patient treatment and any imaging, if applicable, and the duration for which the patients will be enrolled in the trial. In the event that the Company does not identify some costs which have begun to be incurred, or the Company under or overestimates the level of services performed or the costs of such services in a given period, its reported expenses for such period would be understated or overstated. The Company currently reflects the effects of any changes in estimates based on changes in facts and circumstances directly in its operations in the period such change becomes known.

With respect to financial reporting periods presented in this Quarterly Report on Form 10-Q, the timing of the Company's actual costs incurred have not differed materially from its estimated timing of such costs.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which is intended to simplify the accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. The Company adopted ASU 2019-02 effective January 1, 2021. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

(4) Collaborations and License Agreements

Collaboration Agreement

AstraZeneca

In December 2018, the Company entered into a clinical supply agreement (the "AstraZeneca Agreement") with a wholly-owned subsidiary of AstraZeneca to evaluate the safety and efficacy of AstraZeneca's IMFINZI (durvalumab), a human monoclonal antibody directed against PD-L1, in combination with tivozanib as a first-line treatment or following bevacizumab and atezolizumab treatment for patients with advanced, unresectable HCC in an open-label, multi-center, randomized phase 1b/2 clinical trial (the "DEDUCTIVE trial"). The Company serves as the study sponsor; each party contributes the clinical supply of its study drug; key decisions are made by both parties by consensus; and external study costs are otherwise shared equally.

The Company is accounting for the joint development activities under the AstraZeneca Agreement as a joint risk-sharing collaboration in accordance with ASC 808 because both the Company and AstraZeneca are active participants in the oversight of the DEDUCTIVE trial via their participation on a joint steering committee and are exposed to significant risk and rewards in connection with the activity based on their obligation to share in the costs. AstraZeneca does not meet the definition of a "Customer," thus the joint development activities under the AstraZeneca Agreement are not accounted for under ASC 606.

Payments from AstraZeneca with respect to its share of the external costs for the DEDUCTIVE trial incurred by the Company pursuant to a joint development plan are recorded as a reduction in research and development expenses due to the joint risk-sharing nature of the activities that is not representative of a vendor-customer relationship.

The Company records reimbursements from AstraZeneca for external study costs as a reduction in research and development expense during the period that reimbursable expenses are incurred. As a result of the cost sharing provisions in the AstraZeneca Agreement, the Company's research and development expenses were reduced by approximately \$0.2 million in each of the three months ended September 30, 2021 and 2020, and by approximately \$0.7 million and \$0.8 million in the nine months ended September 30, 2021 and 2020, respectively. The amount due to the Company from AstraZeneca pursuant to the cost-sharing provision was approximately \$0.6 million as of September 30, 2021.

Out-License Agreements

EUSA

In December 2015, the Company entered into a license agreement with EUSA (the "EUSA Agreement"), under which the Company granted to EUSA the exclusive, sublicensable right to develop, manufacture and commercialize tivozanib in the territories of Europe (excluding Russia, Ukraine and the Commonwealth of Independent States), Latin

America (excluding Mexico), Africa and Australasia (collectively, the “EUSA Licensed Territories”) for all diseases and conditions in humans, excluding non-oncologic diseases or conditions of the eye.

EUSA made research and development reimbursement payments to the Company of \$2.5 million upon the execution of the EUSA Agreement during the year ended December 31, 2015 and \$4.0 million in September 2017 upon its receipt of marketing approval from the European Commission in August 2017 for FOTIVDA (tivozanib) for the treatment of RCC. In September 2017, EUSA elected to opt-in to co-develop the phase 2 clinical trial of tivozanib in combination with nivolumab in the first-line and the second-line treatment of RCC (the “TiNivo trial”). As a result of exercising its opt-in right, EUSA made an additional research and development reimbursement payment to the Company of \$2.0 million. This \$2.0 million payment was received in October 2017, in advance of the completion of the TiNivo trial, and represented EUSA’s approximate 50% share of the total costs of the TiNivo trial. The Company is also eligible to receive an additional research and development reimbursement payment from EUSA, in the amount of \$20.0 million, for the Company’s phase 3 randomized, controlled, multi-center, open-label clinical trial comparing tivozanib to an approved therapy, sorafenib (Nexavar®), in RCC patients whose disease had relapsed or become refractory to two or three prior systemic therapies, including subjects with prior checkpoint inhibitor therapy (the “TIVO-3 trial”), if EUSA elects to opt-in to that study.

The Company is entitled to receive milestone payments of \$2.0 million per country upon reimbursement approval for RCC, if any, in each of France, Germany, Italy, Spain and the United Kingdom (collectively, the “EU5”). The Company is also entitled to receive an additional \$2.0 million for the grant of marketing approval for RCC, if any, in three of the licensed countries outside of the EU, as mutually agreed by the parties, of which approvals have been obtained in New Zealand in July 2019 and in South Africa in September 2020. In February 2018, November 2018 and February 2019, EUSA obtained reimbursement approval from the National Institute for Health and Care Excellence (“NICE”) in the United Kingdom, the German Federal Association of the Statutory Health Insurances (“GKV-SV”) in Germany and the Ministry of Health, Consumer Affairs and Social Welfare (“MSCBS”) in Spain, respectively, for the first-line treatment of RCC. Accordingly, the Company earned a \$2.0 million milestone payment with respect to reimbursement approval in the United Kingdom that was received in March 2018, a \$2.0 million milestone payment with respect to reimbursement approval in Germany that was received in December 2018 and a \$2.0 million milestone payment with respect to reimbursement approval in Spain that was received in May 2019. The Company is also eligible to receive a payment of \$2.0 million per indication in connection with a filing by EUSA with the European Medicines Agency (“EMA”) for marketing approval, if any, for tivozanib for the treatment of each of up to three additional indications and \$5.0 million per indication in connection with the EMA’s grant of marketing approval for each of up to three additional indications, as well as potentially up to \$335.0 million upon EUSA’s achievement of certain sales thresholds. The Company is also eligible to receive tiered double-digit royalties on net sales, if any, of licensed products in the EUSA Licensed Territories ranging from a low double digit up to mid-twenty percent depending on the level of annual net sales. No milestone payments nor research and development reimbursement payments were earned in the three and nine months ended September 30, 2021 and 2020.

Pursuant to the KKC Agreement (as defined below), the Company is required to pay KKC a 30% sublicense fee related to earned milestone payments and royalties from EUSA. However, research and development reimbursement payments by EUSA are excluded from the 30% sublicense fee due to KKC, subject to certain limitations. If EUSA elects to opt-in to the TIVO-3 trial, only approximately \$8.7 million of the final \$20.0 million research and development payment by EUSA would be subject to the 30% sublicense fee due to KKC. The \$2.0 million milestone payments the Company earned in each of February 2018, November 2018 and February 2019 upon EUSA’s reimbursement approval for FOTIVDA from the NICE in the United Kingdom, the GKV-SV in Germany and the MSCBS in Spain, respectively, for the first-line treatment of RCC were subject to the 30% KKC sublicense fee, or \$0.6 million, each. The sublicense fees for EUSA’s reimbursement approvals in the United Kingdom, Germany and Spain were paid in April 2018, January 2019 and June 2019, respectively.

EUSA is obligated to use commercially reasonable efforts to seek regulatory approval for and commercialize tivozanib throughout the EUSA Licensed Territories in RCC. EUSA has responsibility for all activities and costs associated with the further development, manufacture, regulatory filings and commercialization of tivozanib in the EUSA Licensed Territories.

Accounting Under ASC 606

Under ASC 606, the upfront consideration and regulatory milestones included in the transaction price are being recognized as collaboration and licensing revenue over the Company’s substantive performance period from contract execution in December 2015 through April 2022. Under ASC 606, upon the achievement of a regulatory milestone, the

amount that represents the cumulative catch-up for the period from contract execution in December 2015 through the date of the milestone achievement is recognized as collaboration and licensing revenue, with the balance classified as deferred revenue and recognized as collaboration and licensing revenue over the remainder of the performance period, currently estimated through April 2022.

None of the remaining regulatory-related milestones are included in the transaction price as these milestone amounts were fully constrained. As part of its evaluation of the constraint, the Company considered multiple factors: (i) the remaining reimbursement and marketing approvals in RCC are outside of the control of EUSA and vary on a country-by-country basis; (ii) milestones related to the submission filings for EMA approval of tivozanib in up to three additional indications are contingent upon the success of future clinical trials in additional indications, if any, and are outside of the control of EUSA; (iii) milestones related to the marketing approval by the EMA for tivozanib in up to three additional indications are contingent upon the success of the corresponding future clinical trials, if any, and are outside of the control of EUSA; and (iv) efforts by EUSA.

Any consideration related to sales-based milestones (including royalties) will be recognized when the related sales occur as these amounts have been determined to relate predominantly to the license granted to EUSA and therefore are recognized at the later of when the performance obligation is satisfied (or partially satisfied) or the related sales occur. The Company will re-evaluate the transaction price, including its estimated variable consideration for milestones included in the transaction price and all constrained amounts, in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

In November 2017, the Company began earning sales royalties upon EUSA's commencement of the first commercial launch of FOTIVDA with the initiation of product sales in Germany. EUSA has received reimbursement approval for and commercially launched FOTIVDA in Germany, the United Kingdom and Spain, as well as in some additional non-EU5 countries. EUSA is working to secure reimbursement approval in Italy and France and commercially launch FOTIVDA in additional EUSA licensed territories. The Company recognized royalty revenue of approximately \$0.4 million and \$0.3 million in the three months ended September 30, 2021 and 2020, respectively, and approximately \$1.1 million and \$0.9 million in the nine months ended September 30, 2021 and 2020, respectively.

The Company recognized total revenues under the EUSA Agreement of approximately \$0.9 million and \$0.8 million in the three months ended September 30, 2021 and 2020, respectively, and approximately \$2.5 million and \$2.3 million in the nine months ended September 30, 2021 and 2020, respectively. As of September 30, 2021, there was approximately \$1.1 million in total deferred revenue that is expected to continue to be recognized as collaboration and licensing revenue, in the approximate amount of \$0.5 million per quarter, over the duration of the Company's performance period, currently estimated through April 2022.

The following table summarizes the revenues earned in connection with the EUSA Agreement under ASC 606 for the three and nine months ended September 30, 2021 and 2020 (in thousands):

Revenue Type	Date Achieved	Three Months Ended September 30,	
		2021	2020
Collaboration and Licensing Revenue:			
<i>Amounts in contract liabilities at the beginning of the period:</i>			
Upfront payment	December 2015	\$ 98	\$ 98
R&D payment - EMA approval in RCC	August 2017	158	158
Milestone - UK reimbursement approval	February 2018	79	79
Milestone - German reimbursement approval	November 2018	79	79
Milestone - Spanish reimbursement approval	February 2019	79	79
		\$ 493	\$ 493
Partnership Royalties		362	307
Total		\$ 855	\$ 800

Revenue Type	Date Achieved	Nine Months Ended September 30,	
		2021	2020
Collaboration and Licensing Revenue:			
<i>Amounts in contract liabilities at the beginning of the period:</i>			
Upfront payment	December 2015	\$ 296	\$ 296
R&D payment - EMA approval in RCC	August 2017	473	473
Milestone - UK reimbursement approval	February 2018	237	237
Milestone - German reimbursement approval	November 2018	237	237
Milestone - Spanish reimbursement approval	February 2019	237	237
		\$ 1,480	\$ 1,480
Partnership Royalties		1,050	853
Total		\$ 2,530	\$ 2,333

The following table summarizes changes in the Company's accounts receivable and contract liabilities (deferred revenue) in connection with the EUSA Agreement for the nine months ended September 30, 2021 (in thousands):

Contract Assets	Beginning Balance January 1, 2021	Additions	Deductions	Ending Balance September 30, 2021
	Partnership receivables	\$ 392	\$ 1,050	\$ (1,080)

Contract Liabilities	Transaction Price	Date Achieved	Date Paid	Deferred Revenue			
				Beginning Balance January 1, 2021	Additions	Deductions	Ending Balance September 30, 2021
<i>Amounts in contract liabilities at the beginning of the period:</i>							
Upfront payment	\$ 2,500	December 2015	December 2015	\$ 512	\$ —	\$ 296	\$ 216
R&D payment - EMA approval in RCC	4,000	August 2017	September 2017	817	—	473	344
Milestone - UK reimbursement approval	2,000	February 2018	March 2018	408	—	237	171
Milestone - German reimbursement approval	2,000	November 2018	December 2018	407	—	237	170
Milestone - Spanish reimbursement approval	2,000	February 2019	May 2019	408	—	237	171
Total	\$ 12,500			\$ 2,552	\$ —	\$ 1,480	\$ 1,072

Biodesix

In April 2014, the Company entered into a worldwide co-development and collaboration agreement (the "Biodesix Agreement") with Biodesix, Inc. ("Biodesix") to develop and commercialize ficlatuzumab, the Company's potent humanized IgG1 monoclonal antibody that targets HGF. Under the Biodesix Agreement, prior to the first commercial sale of ficlatuzumab, each party had the right to elect to discontinue its funding obligation for further development or commercialization efforts with respect to ficlatuzumab in exchange for reduced economics in the program, which is referred to as an "Opt-Out." In September 2020, the Company regained full global rights to ficlatuzumab, effective December 2, 2020, when Biodesix exercised its "Opt-Out" rights under the Biodesix Agreement.

Pursuant to the terms of the Biodesix Agreement, as a result of Biodesix's election to Opt-Out, Biodesix will (i) continue to be responsible for reimbursement of development costs with respect to the ongoing open label Phase 2

investigator-sponsored clinical trial of ficlatuzumab in combination with ERBITUX® (cetuximab) in HNSCC (the “Phase 2 HNSCC Trial”), (ii) cease to be entitled to 50% sharing of profits resulting from commercialization of ficlatuzumab, (iii) be entitled to a low double digit royalty on future product sales and 25% of future licensing revenue less approximately \$2.5 million that Biodesix would be required to pay to the Company pursuant to the October 2016 amendment to the Biodesix Agreement and excluding contributions to research and development expenses and (iv) remain responsible for development obligations under the Biodesix Agreement with respect to VeriStrat. Biodesix and the Company also remain obligated to negotiate a commercialization agreement to delineate their rights and obligations in the event of any commercialization of VeriStrat with ficlatuzumab. As a result of Biodesix’s decision to Opt-Out, the Company now has worldwide licensing rights and sole decision-making authority with respect to further development and commercialization of ficlatuzumab. The payment obligations between the parties under the Biodesix Agreement are in effect until completion of the Phase 2 HNSCC Trial.

CANbridge

In March 2016, the Company entered into a collaboration and license agreement (the “CANbridge Agreement”) with CANbridge Life Sciences, Ltd. (“CANbridge”). Under the terms of the CANbridge Agreement, the Company granted CANbridge the exclusive right to develop, manufacture and commercialize AV-203, the Company’s potent humanized IgG1 monoclonal antibody that targets ErbB3 (also known as HER3), for the diagnosis, treatment and prevention of disease in all countries outside of North America.

In March 2021, CANbridge exercised its right to terminate for convenience the CANbridge Agreement. Under the terms of the CANbridge Agreement, the transfer of the AV-203 program was completed in September 2021 and the Company regained worldwide rights to the AV-203 program.

Biogen Idec International GmbH

In March 2009, the Company entered into an exclusive option and license agreement with Biogen regarding the development and commercialization of the Company’s discovery-stage ErbB3-targeted antibodies, including AV-203, for the potential treatment and diagnosis of cancer and other diseases outside of North America (the “Biogen Agreement”). Under the Biogen Agreement, the Company was responsible for developing ErbB3 antibodies through completion of the first phase 2 clinical trial designed in a manner that, if successful, would generate data sufficient to support advancement to a phase 3 clinical trial.

In March 2014, the Company and Biogen amended the Biogen Agreement (the “Biogen Amendment”). Pursuant to the Biogen Amendment, Biogen agreed to the termination of its rights and obligations under the Biogen Agreement, including Biogen’s option to (i) obtain a co-exclusive (with the Company) worldwide license to develop and manufacture ErbB3 targeted antibodies and (ii) obtain exclusive commercialization rights to ErbB3 products in countries in the world other than North America. As a result, the Company has worldwide rights to AV-203. Pursuant to the Biogen Amendment, the Company is obligated to use reasonable efforts to seek a collaboration partner for the purpose of funding further development and commercialization of ErbB3 targeted antibodies. The Company is also obligated to pay Biogen a percentage of milestone payments received by the Company from future partnerships after March 28, 2016 and single digit royalty payments on net sales related to the sale of ErbB3 products, if any, up to a cumulative maximum amount of \$50.0 million.

In-License Agreements

St. Vincent’s

In July 2012, the Company entered into a license agreement with St. Vincent’s, under which the Company obtained an exclusive, worldwide sublicensable right to research, develop, manufacture and commercialize products for human therapeutic, preventative and palliative applications that benefit from inhibition or decreased expression or activity of GDF15, which is also referred to as MIC-1 (the “St. Vincent’s Agreement”). Under the St. Vincent’s Agreement, St. Vincent’s also granted the Company non-exclusive rights for certain related diagnostic products and research tools.

In order to sublicense certain necessary intellectual property rights to Novartis in August 2015, the Company amended and restated the St. Vincent’s Agreement and made an additional upfront payment to St. Vincent’s of \$1.5 million. As of September 30, 2021, the Company is required to make future milestone payments, up to an aggregate total of \$14.4 million, upon the earlier of the achievement of specified development and regulatory milestones or a specified date for the first indication, and upon the achievement of specified development and regulatory milestones for the second and third indications, for licensed therapeutic products, some of which payments may be increased by a mid to high double-

digit percentage rate for milestone payments made after the Company grants any sublicense, depending on the sublicensed territory. The Company will also be required to pay St. Vincent's tiered royalty payments equal to a low-single-digit percentage of any net sales it or its sublicensees make from licensed therapeutic products. The royalty rate escalates within the low-single-digit range during each calendar year based on increasing licensed therapeutic product sales during such calendar year.

Kyowa Kirin Co. (KKC)

In December 2006, the Company entered into an agreement with KKC (the "KKC Agreement"), under which it obtained an exclusive, sublicensable license to develop, manufacture and commercialize tivozanib in all territories in the world except for Asia and the Middle East, where KKC retained the rights to tivozanib. Under the KKC Agreement, the Company obtained exclusive rights to tivozanib in its territory under certain KKC patents, patent applications and know-how for the diagnosis, prevention and treatment of all human diseases and conditions (the "Field"). On August 1, 2019, the Company entered into an amendment to the KKC Agreement pursuant to which KKC repurchased the non-oncology rights to tivozanib in the Company's territory, excluding the rights the Company has sublicensed to EUSA under the EUSA Agreement. The Company has upfront, milestone and royalty payment obligations to KKC under the KKC Agreement related to the amended Field for oncology development by the Company, and following the amendment, KKC also has upfront, milestone and royalty payment obligations to the Company related to non-oncology development by KKC in the Company's territory. Pursuant to the amendment to the KKC Agreement, KKC made a non-refundable upfront payment to the Company in the amount of \$25.0 million that was received in September 2019, and KKC waived the one-time milestone payment of \$18.0 million which would have otherwise been payable by the Company upon obtaining marketing approval on March 10, 2021 for tivozanib in the United States. KKC is required to make milestone payments to the Company of up to an aggregate of \$390.7 million upon the successful achievement of certain development and sales milestones of tivozanib in non-oncology indications.

KKC Agreement

Upon entering into the KKC Agreement, the Company made an upfront payment in the amount of \$5.0 million. In March 2010, the Company made a milestone payment to KKC in the amount of \$10.0 million in connection with the dosing of the first patient in the Company's TIVO-1 trial. In December 2012, the Company made a \$12.0 million milestone payment to KKC in connection with the acceptance by the FDA of the Company's 2012 New Drug Application filing for tivozanib. Pursuant to the amendment to the KKC Agreement, KKC waived the one-time milestone payment of \$18.0 million which would have otherwise been payable by the Company upon obtaining marketing approval on March 10, 2021 for tivozanib in the United States. Each milestone under the KKC Agreement was a one-time only payment obligation. The Company has no remaining development and commercialization milestone payments due to KKC under the KKC Agreement.

The Company is also required to pay tiered royalty payments on net sales it makes of tivozanib in its North American territory, which range from the low to mid-teens as a percentage of net sales. The royalty rate escalates within this range based on increasing tivozanib sales. The Company's royalty payment obligations in a particular country in its territory begin on the date of the first commercial sale of tivozanib in that country, and end on the later of 12 years after the date of first commercial sale of tivozanib in that country or the date of the last to expire of the patents covering tivozanib that have been issued in that country. On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies. On March 22, 2021, the Company commenced product sales of FOTIVDA in the United States. In the three and nine months ended September 30, 2021, the Company recognized approximately \$1.7 million and \$2.7 million in royalties due to KKC on net product sales of FOTIVDA in the United States in its Statement of Operations as a component of cost of products sold.

If the Company sublicenses any of its rights to tivozanib to a third party, as it has done with EUSA, the sublicense defines the payment obligations of the sublicensee, which may vary from the milestone and royalty payment obligations under the KKC Agreement relating to rights the Company retains. The Company is required to pay KKC a fixed 30% of amounts the Company receives from its sublicensees, including upfront license fees, milestone payments and royalties, but excluding amounts the Company receives for research and development reimbursement payments or equity investments, subject to certain limitations.

In connection with the EUSA Agreement, the Company is required to pay KKC the 30% sublicense fee related to earned milestone payments and royalties from EUSA. However, research and development reimbursement payments by EUSA are excluded from the 30% sublicense fee, subject to certain limitations. If EUSA elects to opt-in to the TIVO-3

trial, only approximately \$8.7 million of the final \$20.0 million research and development payment by EUSA would be subject to the 30% sublicense fee due to KKC. Refer to the section above, "Out License Agreements – EUSA", for further discussion of the actual 30% sublicense fees incurred and paid to-date to KKC.

The Company and KKC each have access to and can benefit from the other party's clinical data and regulatory filings with respect to tivozanib and biomarkers identified in the conduct of activities under the KKC Agreement, as related to the amended Field for oncology development. Under the KKC Agreement, the Company is obligated to use commercially reasonable efforts to develop and commercialize tivozanib in its territory.

The KKC Agreement will remain in effect until the expiration of all of the Company's royalty and sublicense revenue obligations, determined on a product-by-product and country-by-country basis, unless terminated earlier. If the Company fails to meet its obligations under the KKC Agreement and is unable to cure such failure within specified time periods, KKC can terminate the KKC Agreement, resulting in a loss of our rights to tivozanib and an obligation to assign or license to KKC any intellectual property or other rights the Company may have in tivozanib, including its regulatory filings, regulatory approvals, patents and trademarks for tivozanib.

August 1, 2019 Amendment to the KKC Agreement

In addition to the non-refundable upfront payment to the Company pursuant to the amendment to the KKC Agreement in the amount of \$25.0 million and the waiver of the \$18.0 million milestone for United States approval of tivozanib, the Company earned and received a \$2.8 million development milestone payment in August 2020 pursuant to the amendment to the KKC Agreement upon the acceptance of KKC's investigational new drug, or IND, application for a non-oncology use of tivozanib by the Pharmaceuticals and Medical Devices Agency of Japan on August 2, 2020. KKC is also required to make remaining milestone payments to the Company of up to an aggregate of \$387.9 million upon the successful achievement of certain development and sales milestones of tivozanib in non-oncology indications. KKC is required to make tiered royalty payments to the Company on net sales of tivozanib in non-oncology indications in the Company's territory, which range from high single digit to low double digits as a percentage of net sales. The royalty rate escalates within this range based on increasing tivozanib sales, subject to certain adjustments. KKC's royalty payment obligations in a particular country in the Company's territory begin on the date of the first commercial sale of tivozanib in that country, and end on the later of the expiration date of the last valid claim of a patent application or patent owned by KKC covering tivozanib or 10 years after the date of first commercial sale of tivozanib in non-oncology indications in that country. No milestone payments were earned in the three months and nine months ended September 30, 2021. During the three and nine months ended September 30, 2020, the Company received a \$2.8 million development milestone payment.

If KKC sublicenses any of its rights to tivozanib to a third-party, KKC is required to pay the Company a percentage of amounts received from the respective sublicensees related to the Company's territory, including upfront license fees, milestone payments and royalties, but excluding amounts received in respect of research and development reimbursement payments or equity investments, subject to certain limitations.

Accounting Analysis Under the August 1, 2019 Amendment to the KKC Agreement

Following the repurchase of non-oncology rights by KKC, the amended KKC Agreement is accounted for as two distinct agreements: (i) the KKC Agreement by which the Company has upfront, milestone and royalty payment obligations to KKC related to the Company's oncology development of tivozanib in the amended Field for the Company's territory that continues to be accounted for under ASC 730, *Research and Development*, and (ii) the amended KKC Agreement by which KKC has upfront, milestone and royalty payment obligations to the Company related to its non-oncology development of tivozanib for the Company's territory that will be accounted for under ASC 606.

The Company evaluated the amendment to the KKC Agreement under ASC 606 and determined that KKC met the definition of a "Customer" as the Company considers the licensing or sale of intellectual property rights to be an output of the Company's ordinary activities and is central to the operations of the Company. The Company determined that the amendment to the KKC Agreement contained a single performance obligation related to the Company's transfer of rights to non-oncology intellectual property and know-how to KKC, excluding the rights the Company has sublicensed to EUSA under the EUSA Agreement. In addition, the Company determined that the \$25.0 million non-refundable upfront payment received from KKC in September 2019 constituted the amount of the consideration to be included in the transaction price and attributed this amount to the Company's single performance obligation. The Company satisfied this performance obligation during the third quarter of 2019. Accordingly, the Company recognized the \$25.0 million in consideration as revenue in the third quarter of 2019. The Company concluded the performance obligation was satisfied at a point in time

because any know-how or clinical data generated from the Company's ongoing oncology development of tivozanib would not benefit KKC's non-oncology development of tivozanib.

In the third quarter of 2020, the Company increased the transaction price to \$27.8 million to include the \$2.8 million development milestone that was earned in August 2020 upon the acceptance of KKC's IND application for a non-oncology use of tivozanib by the Pharmaceuticals and Medical Devices Agency of Japan. Accordingly, the Company recognized the \$2.8 million in consideration as revenue in the third quarter of 2020 as the Company did not have any ongoing performance obligations under the amendment to the KKC Agreement.

None of KKC's remaining development and regulatory milestones to the Company related to its non-oncology development of tivozanib for the Company's territory were included in the transaction price, as these milestone amounts were fully constrained. As part of its evaluation of the constraint, the Company considered multiple factors: (i) regulatory approvals are outside of the control of KKC; (ii) certain development and regulatory milestones are contingent upon the success of future clinical trials, if any, which is out of the control of KKC; and (iii) efforts by KKC. Any consideration related to development and regulatory milestones owed by KKC to the Company will be recognized when the corresponding milestones are no longer constrained as the Company does not have any ongoing performance obligations. Any consideration related to sales-based milestones (including royalties) will be recognized when the related sales occur as these amounts have been determined to relate predominantly to the intellectual property transferred to KKC and therefore are recognized at the later of when the performance obligation is satisfied or the related sales occur.

(5) Other Accrued Liabilities

Other accrued expenses consisted of the following (in thousands):

	September 30, 2021	December 31, 2020
Compensation and benefits	\$ 4,157	\$ 3,082
FOTIVDA U.S. Product Royalties	1,718	—
Professional fees	1,413	1,061
FOTIVDA Federal Rebates, Customer Credits and Co-Pay Assistance	1,180	—
Other	1,016	320
Total	<u>\$ 9,484</u>	<u>\$ 4,463</u>

(6) Hercules Loan Facility

On May 28, 2010, the Company entered into a loan and security agreement (the "First Loan Agreement") with Hercules Capital Inc. and certain of its affiliates ("Hercules"). The First Loan Agreement was subsequently amended in March 2012, September 2014, May 2016 and amended and restated in December 2017 (the "2017 Loan Agreement" and as amended by the 2020 Loan Amendment (as defined below) and the 2021 Loan Amendment (as defined below), the "Loan Agreement").

On August 7, 2020, the Company entered into a first amendment to the 2017 Loan Agreement (the "2020 Loan Amendment") to provide the Company, subject to certain terms and conditions, with an additional term loan in an aggregate principal amount of up to \$35.0 million (the "2020 Loan Facility") in up to four tranches to be used to refinance outstanding loans under the 2017 Loan Agreement, and for general working capital purposes. The Company received the initial \$15.0 million of the 2020 Loan Facility upon the closing of the 2020 Loan Amendment, of which approximately \$9.7 million was used to retire the then outstanding balance under the 2017 Loan Agreement and of which approximately \$5.3 million was new loan funding which was used for general working capital purposes.

The remainder of the loan amount is available to the Company, at its option, subject to certain terms and conditions, including upon the achievement of the following milestones: (i) the second tranche in the initial amount of \$10.0 million ("Tranche Two") was available through June 30, 2021 upon achieving FDA approval of FOTIVDA ("Performance Milestone I"), (ii) the third tranche of \$5.0 million ("Tranche Three") was initially available from July 1, 2021 through January 31, 2022 assuming the Company was to achieve \$20.0 million in net product revenues from sales of FOTIVDA, by no later than December 31, 2021 ("Performance Milestone II"), and (iii) the fourth tranche of \$5.0 million ("Tranche Four") is available through June 30, 2022 contingent upon the achievement of both Performance Milestone I and Performance Milestone II, and subject to the consent of Hercules.

The 2020 Loan Amendment also amended the 2017 Loan Agreement by: (i) extending maturity until September 1, 2023, which is extendable to September 1, 2024 at the Company's option assuming the Tranche Three funding has occurred, (ii) providing for an interest-only period beginning on the closing date of 2020 Loan Amendment and ending on September 30, 2021, which period may be extended through September 30, 2022 provided the Company achieves Performance Milestone I and further extendable through March 31, 2023 after the Tranche Three funding has occurred, if at all, and (iii) revising the per annum interest rate to the greater of (x) 9.65% and (y) an amount equal to 9.65% plus the prime rate as reported in the Wall Street Journal minus 3.25% as determined daily, provided however, that the per annum interest rate shall not exceed 15%. Principal payments were scheduled to commence on October 1, 2021 at the earliest, as described above. The interest rate as of September 30, 2021 was 9.65%.

Per the terms of the 2020 Loan Facility, principal will be repaid in equal monthly installments following the conclusion of the interest-only period. The Company may prepay all of the outstanding principal and accrued interest under the 2020 Loan Facility, subject to a prepayment charge up to 3.0% in the first year following the closing of the 2020 Loan Amendment, decreasing to 2.0% in year two and 1.0% in year three. The Company is obligated to make an end-of-term payment of 6.95% of the aggregate amount of loan funding received under the 2020 Loan Facility on the earlier of the maturity of the loan or the date on which the Company prepays any outstanding loan balance. The approximate \$0.8 million end-of-term payment under the 2017 Loan Agreement continued to be due and was paid on July 1, 2021. In connection with the 2020 Loan Amendment, the Company incurred approximately \$0.3 million in loan issuance costs paid directly to Hercules, which are accounted for as a loan discount. The 2020 Loan Amendment was accounted for as a loan modification in accordance with ASC 470-50.

The 2020 Loan Facility includes various financial and operating covenants, including that the Company maintain an unrestricted cash position of at least \$10.0 million through the date the Third Tranche funding is received and at least \$5.0 million thereafter through the maturity of the loan. The Company is also required to achieve greater than or equal to 75% of its forecasted net product revenues from its sales of tivozanib over a six month trailing period, as defined and measured on a monthly basis, effective upon the earlier of receiving Third Tranche funding and the month of April 2022.

On February 1, 2021, the Company entered into the second amendment to the 2017 Loan Agreement (the "2021 Loan Amendment"), which increases the 2020 Loan Facility from up to \$35.0 million to up to \$45.0 million following FDA approval of FOTIVDA. The 2021 Loan Amendment makes certain changes to the 2020 Loan Amendment, including, among other things, (i) increasing Tranche Two funding upon achieving Performance Milestone I from \$10.0 million to \$20.0 million, thereby increasing the total amount of unfunded term loan commitments under the 2020 Loan Facility from \$20.0 million to \$30.0 million, (ii) increasing the amount of net product revenues from sales of FOTIVDA required to achieve Performance Milestone II from \$20.0 million to \$35.0 million and changing the deadline for achieving Performance Milestone II from December 31, 2021 to April 1, 2022 and (iii) increasing the amount of the financial covenant for the maintenance of an unrestricted cash position from at least \$10.0 million to at least \$15.0 million from the date the Tranche Two funding is received until the date the Tranche Three funding is received and at least \$10.0 million thereafter through the maturity of the Loan Agreement. In connection with the 2021 Loan Amendment, the Company incurred approximately \$0.1 million in loan issuance costs paid directly to Hercules, which are accounted for as a loan discount.

On March 11, 2021, the Company completed the \$20.0 million drawdown of Tranche Two funding under the 2021 Loan Amendment that was made available in connection with the achievement of Performance Milestone I upon FDA approval of FOTIVDA on March 10, 2021. The achievement of Performance Milestone I extended the interest-only period by twelve months from September 30, 2021 to September 30, 2022 and increased the amount of unrestricted cash required for the Company to satisfy the minimum financial covenant during the period between receiving Tranche Two funding and Tranche Three funding from \$10.0 million to \$15.0 million.

As of September 30, 2021, the total principal balance was \$35.0 million, principal payments are scheduled to commence on October 1, 2022 and the corresponding end-of-term payments under the 2020 Loan Facility, in the aggregate amount of approximately \$2.4 million, are due upon the current loan maturity date of September 1, 2023. As of September 30, 2021, \$10.0 million remains available to the Company in committed funding under the 2020 Loan Facility, including \$5.0 million for Tranche Three funding upon the achievement of Performance Milestone II for \$35.0 million in net product revenues from sales of FOTIVDA and \$5.0 million in Tranche Four funding contingent upon the achievement of both Performance Milestone I and Performance Milestone II, and subject to the consent of Hercules. The unamortized discount to be recognized over the remainder of the loan period was approximately \$2.0 million and \$1.2 million as of September 30, 2021 and December 31, 2020, respectively. Per the 2017 Loan Agreement, the end-of-term payment of approximately \$0.8 million was paid on July 1, 2021, as scheduled.

The 2020 Loan Facility is secured by substantially all of the Company's assets, excluding intellectual property. The 2020 Loan Facility provides that certain events shall constitute a default by the Company, including failure by the Company to pay amounts under the 2020 Loan Amendment when due; breach or default in the performance of any covenant under the 2020 Loan Amendment by the Company, subject to certain cure periods; insolvency of the Company and certain other bankruptcy proceedings involving the Company; default by the Company of obligations involving indebtedness in excess of \$500,000; and the occurrence of an event or circumstance that would have a material adverse effect upon the business of the Company. As of September 30, 2021, the Company was in compliance with all loan covenants, Hercules has not asserted any events of default and the Company does not believe that there has been a material adverse effect as defined in the 2020 Loan Amendment.

The Company has determined that the risk of subjective acceleration under the material adverse events clause is remote and therefore has classified the outstanding principal as a long-term liability based on the timing of scheduled principal payments.

Future minimum payments under the loans payable outstanding as of September 30, 2021 are as follows (in thousands):

Year Ending December 31:	
2021 (remaining three months)	\$ 854
2022	11,785
2023	30,097
	<hr/> 42,736
Less amount representing interest	(5,303)
Less unamortized discount	(1,974)
Less deferred charges	(2,433)
Less loans payable current, net of discount	—
Loans payable, net of current portion and discount	<hr/> <hr/> \$ 33,026

(7) Common Stock

As of September 30, 2021, the Company had 50,000,000 authorized shares of common stock, \$0.001 par value, of which 34,373,995 shares were issued and outstanding.

Public Offering – March 2021

On March 26, 2021, the Company completed an underwritten public offering of 6,900,000 shares of its common stock, including the full exercise by the underwriters of their option to purchase an additional 900,000 shares, at the public offering price of \$8.00 per share for gross proceeds of approximately \$55.2 million. The net offering proceeds to the Company were approximately \$51.7 million after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company.

Universal Shelf Registration Statement

On November 9, 2020, the Company filed a shelf registration statement on Form S-3 with the SEC, which covers the offering, issuance and sale of up to \$300.0 million of its common stock, preferred stock, debt securities, warrants and/or units (the "2020 Shelf"). The 2020 Shelf (File No. 333-249982) was declared effective by the SEC on November 18, 2020 and was filed to replace the Company's then existing shelf registration statement, which was terminated. As of September 30, 2021, there was approximately \$213.0 million available for future issuance of common stock, preferred stock, debt securities, warrants and/or units.

Public Offering – June 2020

On June 19, 2020, the Company completed an underwritten public offering of 9,725,000 shares of its common stock, including the partial exercise by the underwriters of their option to purchase an additional 1,225,000 shares, at the public offering price of \$5.25 per share for gross proceeds of approximately \$51.1 million. Three stockholders beneficially holding more than 5% of the Company's voting securities, including an entity affiliated with New Enterprise Associates

and two other stockholders, purchased an aggregate of 4,503,571 shares in this offering at the same public offering price per share as the other investors. At such time, entities affiliated with New Enterprise Associates (collectively) beneficially held more than 5% of the Company's voting securities. The net offering proceeds to the Company were approximately \$47.7 million after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company.

Expired Offering Warrants from April 2019 Public Offering – Expiration Date of April 8, 2021

In April 2019, the Company completed an underwritten public offering of 2,173,913 shares of its common stock and warrants to purchase an aggregate of 2,500,000 shares of its common stock ("the Offering Warrants"), including warrants to purchase an aggregate of 326,086 shares of its common stock sold pursuant to the underwriter's partial exercise of its overallotment option, at the public offering price of \$11.40 per share and \$0.10 per warrant for gross proceeds of approximately \$25.0 million. The Offering Warrants were immediately exercisable upon issuance at an exercise price of \$12.50 per share, subject to adjustment in certain circumstances, and expired two years from the date of issuance on April 8, 2021. Any Offering Warrants that had not been exercised for cash prior to their expiration were to be automatically exercised via cashless exercise on the expiration date. The shares and warrants were issued separately and were separately transferable. An entity affiliated with New Enterprise Associates purchased 434,782 shares and warrants to purchase an aggregate of 434,782 shares in this offering at the same public offering price per share as the other investors. At such time, entities affiliated with New Enterprise Associates (collectively) beneficially held more than 5% of the Company's voting securities. The net offering proceeds to the Company were approximately \$22.8 million after deducting underwriting discounts and commissions and estimated offering expenses payable by the Company. The Company determined the shares of common stock and the Offering Warrants represented freestanding financial instruments. In addition, the Company conducted an assessment of the classification of the Offering Warrants and, based on their terms, concluded the Offering Warrants were equity-classified. Accordingly, the net offering proceeds of \$22.8 million were recorded within stockholders' equity (deficit).

In March 2021, Offering Warrants exercisable for 247,391 shares of common stock were exercised, for approximately \$3.1 million in cash proceeds. On April 8, 2021, all of the remaining 2,252,609 Offering Warrants expired and no shares of the Company's common stock were issued via automatic cashless exercises of unexercised warrants on the date of expiration as the \$12.50 exercise price was greater than the Company's closing stock price of \$7.01 on April 8, 2021.

Sales Agreement with SVB Leerink

In February 2018, the Company entered into a sales agreement with SVB Leerink LLC ("SVB Leerink" and the "SVB Leerink Sales Agreement") pursuant to which the Company may issue and sell shares of its common stock from time to time up to an aggregate amount of \$50.0 million, at its option, through SVB Leerink as its sales agent, with any sales of common stock through SVB Leerink being made by any method that is deemed an "at-the-market offering" as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), or in other transactions pursuant to an effective shelf registration statement on Form S-3. The Company agreed to pay SVB Leerink a commission of up to 3% of the gross proceeds of any sales of common stock pursuant to the SVB Leerink Sales Agreement. The Company sold 470,777 shares, 1,251,555 shares, 1,070,175 shares and 330,688 shares pursuant to the SVB Leerink Sales Agreement, resulting in proceeds net of commissions of approximately \$10.3 million, \$7.5 million, \$5.9 million and \$3.4 million in the fourth quarter of 2018, February 2019, November 2020 and March 2021, respectively. As of September 30, 2021, approximately \$22.2 million was available for issuance in connection with future stock sales pursuant to the SVB Leerink Sales Agreement.

Expired PIPE Warrants from May 2016 Private Placement – Expiration Date of May 16, 2021

In May 2016, the Company entered into a securities purchase agreement with a select group of qualified institutional buyers, institutional accredited investors and accredited investors pursuant to which the Company sold 1,764,242 units, at a price of \$9.65 per unit, for gross proceeds of approximately \$17.0 million. Each unit consisted of one share of the Company's common stock and a warrant to purchase one share of the Company's common stock (the "PIPE Warrants"). The PIPE Warrants had an exercise price of \$10.00 per share and expired five years from the date of issuance on May 16, 2021. Certain of the Company's directors and executive officers purchased an aggregate of 54,402 units in this offering at the same price as the other investors. The net offering proceeds to the Company were approximately \$15.4 million after deducting placement agent fees and other offering expenses payable by the Company. PIPE Warrants

exercisable for 80,309 shares of common stock had been exercised for approximately \$0.8 million in cash proceeds and all of the remaining 1,683,933 PIPE Warrants expired on May 16, 2021.

(8) Stock-based Compensation

Stock Incentive Plan

The Company previously maintained the 2010 Stock Incentive Plan (the “2010 Plan”) for employees, consultants, advisors and directors, as amended in March 2013, June 2014 and June 2017.

In April 2019, the Company’s board of directors adopted the 2019 Equity Incentive Plan (the “2019 Plan”) and on June 12, 2019 the stockholders approved the 2019 Plan at the Annual Meeting of Stockholders. The 2019 Plan provides similar terms as the 2010 Plan, including: (i) a provision for the grant of equity awards such as stock options and restricted stock; (ii) that the exercise price of incentive stock options cannot be less than 100% of the fair market value of the common stock on the date of the grant for participants who own less than 10% of the total combined voting power of stock of the Company and not less than 110% for participants who own more than 10% of the total combined voting power of the stock of the Company; (iii) that options and restricted stock granted under the 2019 Plan vest over periods as determined by the board of directors, which generally are equal to four years; and (iv) that options granted under the 2019 Plan expire over periods as determined by the board of directors, which generally are ten years from the date of grant. In April 2020, the board of directors adopted an amendment to the 2019 Plan to increase the total number of shares reserved under the Plan by 1,300,000 shares, among other things. This amendment was approved by stockholders at the Annual Meeting of Stockholders held on June 10, 2020. In April 2021, the board of directors adopted an additional amendment to the 2019 Plan to increase the total number of shares reserved under the Plan by 2,200,000. This amendment was approved by stockholders at the Annual Meeting of Stockholders held on June 9, 2021.

Awards may be made under the 2019 Plan for up to the sum of (i) 4,500,000 shares of common stock and (ii) such additional number of shares of common stock (up to 1,068,901 shares) as is equal to (x) the number of shares of common stock reserved for issuance under the 2010 Plan that were available for grant under the 2010 Plan immediately prior to the date the 2019 Plan was approved by the Company’s stockholders and (y) the number of shares of common stock subject to awards outstanding under the 2010 Plan, which awards expire, terminate or are otherwise surrendered, cancelled, forfeited or repurchased by the Company pursuant to a contractual repurchase right. As of September 30, 2021, there were 2,481,800 shares of common stock available for future issuance under the 2019 Plan and no shares of common stock available for future issuance under the 2010 Plan.

The following table summarizes stock option activity during the nine months ended September 30, 2021:

	Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at January 1, 2021	1,816,690	\$ 11.04	7.53	\$ 170,000
Granted	1,530,018	\$ 8.70		
Exercised	—	—		
Forfeited	(268,536)	\$ 13.59		
Outstanding at September 30, 2021	3,078,172	\$ 9.65	7.88	\$ 396,607
Exercisable at September 30, 2021	1,209,546	\$ 12.10	6.25	\$ 130,994

The aggregate intrinsic value is based upon the Company’s closing stock price of \$6.18 on September 30, 2021.

The fair value of stock options, subject only to service or performance conditions, that are granted to employees is estimated on the date of grant using the Black-Scholes option-pricing model. The following tables summarize the

assumptions used in the Black-Scholes option-pricing model in the three and nine months ended September 30, 2021 and 2020:

	Three Months Ended September 30,	
	2021	2020
Volatility factor	98.46% - 101.21%	98.99% - 99.99%
Expected term (in years)	5.50 - 6.25	6.25 - 6.25
Risk-free interest rates	0.07% - 1.15%	0.31% - 0.31%
Dividend yield	—	—

	Nine Months Ended September 30,	
	2021	2020
Volatility factor	56.17% - 102.66%	94.37% - 102.48%
Expected term (in years)	0.25 - 6.25	5.50 - 6.25
Risk-free interest rates	0.06% - 1.17%	0.31% - 1.67%
Dividend yield	—	—

The risk-free interest rate is determined based upon the United States Treasury's rates for United States Treasury zero-coupon bonds with maturities similar to those of the expected term of the options being valued. The Company does not expect to pay dividends in the foreseeable future.

Based upon these assumptions, the weighted-average grant date fair value of stock options granted during the nine months ended September 30, 2021 and 2020 was \$6.76 and \$4.55, respectively.

As of September 30, 2021, there was \$11.2 million of total unrecognized stock-based compensation expense related to stock options granted to employees under the Plan. The expense is expected to be recognized over a weighted-average period of 2.93 years.

(9) Legal Proceedings

The Company evaluates developments in legal proceedings on a quarterly basis. The Company records an accrual for loss contingencies to the extent that the Company concludes that it is probable that a liability has been incurred and the amount of the related loss can be reasonably estimated.

As of the date of filing this Quarterly Report on Form 10-Q, there are no outstanding legal proceedings against the Company or its current officers or directors.

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

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and the audited financial information and the notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2020, or Annual Report.

Overview

We are a commercial stage, oncology-focused biopharmaceutical company committed to delivering medicines that provide a better life for patients with cancer. We currently market FOTIVDA[®] (tivozanib) in the United States. FOTIVDA is our first commercial product and was approved by the U.S. Food and Drug Administration, or FDA, for marketing and sale in the United States on March 10, 2021 for the treatment of adult patients with relapsed or refractory renal cell carcinoma, or RCC, following two or more prior systemic therapies. We continue to develop tivozanib in immuno-oncology combinations in RCC and other indications, and we have other investigational programs in clinical development.

FOTIVDA is an oral, next-generation vascular endothelial growth factor receptor, or VEGFR, tyrosine kinase inhibitor, or TKI. The FDA approval of FOTIVDA is based on our pivotal phase 3 randomized, controlled, multi-center, open-label clinical trial comparing tivozanib to an approved therapy, Nexavar[®] (sorafenib), in RCC patients whose disease had relapsed or become refractory to two or three prior systemic therapies, which we refer to as the TIVO-3 trial. The approval is also supported by three additional trials in RCC and includes safety data from over 1,000 clinical trial subjects.

FOTIVDA became commercially available in the United States on March 22, 2021 and is available to patients through a network of specialty pharmacies and distributors. We are currently commercializing FOTIVDA in the United States through the support of approximately 65 field-based employees, which includes approximately 50 oncology sales professionals calling on practicing oncologists. The field force is supported by the AVEO ACE Patient Support program, which is an extensive patient and healthcare provider support program designed to optimize patient access and help patients navigate their treatment journey.

COVID-19 related restrictions have posed challenges for gaining in-person access to customers, prescribers, other healthcare professionals and to certain institutions that remain closed to industry representatives. In light of the restrictions necessitated by the COVID-19 pandemic, we designed our strategic commercial approach to be optimized for remote as well as in-person customer engagement capabilities and expanded our digital marketing strategies. However, changes to standard sales and marketing practices resulting from the COVID-19 pandemic, including the shift from in-person to telephonic and virtual interactions with healthcare professionals, have caused, and may continue to cause, challenges to our ability to successfully commercialize FOTIVDA.

We believe there is significant commercial opportunity for FOTIVDA in the United States. We estimate that the current U.S. market for relapsed or refractory RCC therapy is more than \$1.0 billion, including \$820 million in the second line and \$350 million in the third and fourth lines. As the TIVO-3 trial is the first positive phase 3 study in RCC patients whose disease had relapsed or become refractory to two or three prior systemic therapies as well as the first phase 3 study in RCC to investigate a predefined subpopulation of patients who received prior immunotherapy, a predominant standard of care for earlier lines of therapy, we believe that FOTIVDA could become a standard of care in the United States in this relapsed or refractory setting.

Based on FOTIVDA's demonstrated anti-tumor activity, tolerability profile and reduction of regulatory T-cell production, we are seeking to advance tivozanib in additional cancer indications with significant unmet medical needs. We are studying tivozanib in combination with immune checkpoint inhibitors for the treatment of RCC and hepatocellular carcinoma, or HCC.

We opened enrollment for a phase 3 clinical trial, which we refer to as the TiNivo-2 Trial, in the third quarter of 2021. The TiNivo-2 Trial is a randomized, open-label, controlled, parallel-arm, pivotal phase 3 clinical trial of tivozanib in combination with OPDIVO[®] (nivolumab), as compared to tivozanib as a monotherapy, in patients with advanced refractory RCC following one or two lines of prior therapy, one of which must include immunotherapy. We are the sponsor of the trial and Bristol-Myers Squibb Company, or BMS, is supplying nivolumab, BMS's antibody directed against programmed death-1, or PD-1, therapy for the trial. The TiNivo-2 Trial will seek to further understand the activity and tolerability of this combination following prior immunotherapy.

We are conducting the DEDUCTIVE trial through a drug supply and cost sharing collaboration with AstraZeneca PLC, or AstraZeneca. The DEDUCTIVE trial is an open-label, multi-center, randomized phase 1b/2 clinical trial of tivozanib in combination with AstraZeneca's IMFINZI (durvalumab), a human monoclonal antibody directed against programmed death-ligand 1, or PD-L1. The DEDUCTIVE trial was amended to include patients with advanced, unresectable HCC who have progressed after first-line bevacizumab and atezolizumab treatment as well as first-line treatment of patients with advanced, unresectable HCC who have not received prior systemic therapy for metastatic disease. Enrollment for the first line cohort of the DEDUCTIVE trial is complete. Enrollment for the second line cohort is ongoing and is expected to be completed in the first half of 2022. We expect interim data for the first line cohort to be presented in the first half of 2022 at a scientific meeting.

FOTIVDA, through our partner EUSA Pharma (UK) Limited, or EUSA, is also approved in the European Union, or the EU, New Zealand and South Africa and is reimbursed in the United Kingdom, Germany, Spain and certain other countries in EUSA's territory. FOTIVDA is approved in the EU for the first-line treatment of adult patients with advanced RCC and for adult patients who are VEGFR and mTOR pathway inhibitor-naïve following disease progression after one prior treatment with cytokine therapy for advanced RCC. FOTIVDA has been commercially available in the EU since 2017. EUSA is working to secure reimbursement approval in and commercially launch FOTIVDA in additional countries in the EUSA territory. However, there is significant competition in the first-line RCC setting in the EU due to the approval of several immunotherapy combinations which have become a standard of care and impacted the market opportunity for monotherapy treatments. EUSA has reported to us that, to date, it has not experienced a decrease in sales trends or interruptions in supply or distribution of FOTIVDA during the COVID-19 pandemic; however, the future impact of the COVID-19 pandemic on FOTIVDA sales is difficult to predict.

We are also seeking to advance our pipeline of three wholly owned humanized immunoglobulin G1, or IgG1, monoclonal antibody product candidates, ficlatuzumab, AV-380 and AV-203, and one IgG1 antibody preclinical product candidate, AV-353.

Ficlatuzumab is a potent humanized IgG1 monoclonal antibody that targets hepatocyte growth factor, or HGF. We have previously reported promising early clinical data on ficlatuzumab in squamous cell carcinoma of the head and neck, or HNSCC, pancreatic cancer and acute myeloid leukemia, or AML.

In June 2021, we announced results from the randomized phase 2 confirmatory study of ficlatuzumab, or the Phase 2 HNSCC Trial, in combination with ERBITUX® (cetuximab), an epidermal growth factor receptor, or EGFR, targeted antibody, in patients with recurrent or metastatic HNSCC who relapsed or were refractory to prior immunotherapy, chemotherapy and cetuximab (pan-refractory).

We continue to evaluate opportunities for the further clinical development of ficlatuzumab, including a potential registrational clinical trial of ficlatuzumab in the human papillomavirus negative, or HPV-, HNSCC patient population. In 2020, we contracted with a contract manufacturing organization, or CMO, to manufacture the clinical supply for this registrational clinical trial of ficlatuzumab. However, a shortage of required key raw materials and manufacturing supplies also used in COVID-19 vaccine manufacturing process has delayed the delivery of the clinical supply of ficlatuzumab. Based on our ongoing discussions with our CMO, we expect the key required raw materials and manufacturing supplies for ficlatuzumab to become available in the second quarter of 2022 and we have secured a manufacturing slot with our CMO to meet this timeline.

In September 2021, the FDA granted Fast Track designation for the investigation of ficlatuzumab and cetuximab for the treatment of patients with relapsed or recurrent HNSCC. Assuming the timely manufacturing of ficlatuzumab, the availability of financial resources or strategic partner funding and the continued discussions with the FDA to finalize the trial design under the Fast Track designation, we expect to initiate a registrational clinical trial of ficlatuzumab and cetuximab in the HPV-, recurrent or metastatic, or R/R HNSCC, patient population in the first half of 2023.

AV-380 is a potent humanized IgG1 monoclonal antibody that targets growth differentiation factor 15, or GDF15. In December 2020, the FDA approved our investigational new drug application, or IND, for AV-380 for the potential treatment of cancer cachexia. In the first quarter of 2021, we initiated a phase 1 clinical trial in healthy volunteers and targeted enrollment for the trial was reached in October 2021. We expect data from this phase 1 clinical trial to become available in the first half of 2022. We plan to initiate a phase 1b clinical trial in cancer patients in the middle of 2022.

AV-203 is a potent humanized IgG1 monoclonal antibody that targets ErbB3 (also known as HER3) to which we regained worldwide rights in September 2021. We are exploring AV-203 as a potential oncology treatment.

AV-353 is a preclinical selective and potent IgG1 antibody that targets the Notch 3 pathway. We are exploring AV-353 as a potential oncology treatment.

Business Update Regarding COVID-19. The pandemic caused by an outbreak of a new strain of coronavirus, or the COVID-19 pandemic, that is affecting the U.S. and global economy and financial markets is also impacting our employees, patients, communities and business operations to varying degrees. In the paragraphs that follow, we have described impacts of the COVID-19 pandemic on our commercialization plans and clinical development programs, as applicable. The extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted at this time, such as the duration, scope and severity of the pandemic, the duration and extent of travel restrictions and social distancing in the United States and other countries, business closures and business disruptions, its impact and the economic impact on local, regional, national and international markets, the effectiveness of actions taken in the United States and other countries to contain and treat the disease, periodic and seasonal spikes in infection rates, new strains of the virus that cause outbreaks of COVID-19 and the broad availability of effective vaccines and antiviral treatments. Certain of our operations had been conducted remotely prior to the COVID-19 pandemic, and we have now transitioned essentially all of our business operations to be conducted remotely in response to COVID-19. If the COVID-19 pandemic continues or becomes more severe, it may further impact our ability to maintain that level of productivity, to grow the company as we have anticipated and to execute our commercialization and other long-term business strategies. Management is actively monitoring this situation and the possible effects on our financial condition, liquidity, operations, commercial launch, suppliers, manufacturers, industry and workforce. For additional information on risks posed by the COVID-19 pandemic, please see “Part II, Item 1A. Risk Factors – Risks Related to the COVID-19 Pandemic,” included elsewhere in this Quarterly Report on Form 10-Q.

Financial Overview

We do not have a history of generating operating profits and, as of September 30, 2021, we had an accumulated deficit of \$667.3 million. We anticipate that we will continue to incur significant operating expenses for the foreseeable future as we seek to successfully commercialize FOTIVDA in the United States and continue our planned development activities for our clinical stage assets.

We may require substantial additional funding to continue to advance our pipeline of clinical stage assets, and the timing and nature of these activities will be conducted subject to the availability of sufficient financial resources, principally product sales of FOTIVDA in the United States. Please see “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Liquidity and Going Concern” for a further discussion of our funding requirements.

Revenue

Our revenues have historically been generated primarily through collaborative research, development and commercialization agreements. Payments to us under these arrangements typically include one or more of the following: non-refundable, upfront license fees; option exercise fees; funding of research and/or development efforts; milestone payments; and royalties on future product sales. In November 2017, we began earning sales royalties upon EUSA’s commencement of the first commercial launch of FOTIVDA. In the future, we may generate revenue from a combination of product sales, license fees, milestone payments and research and development payments in connection with strategic partnerships, and royalties resulting from the sales of products developed under licenses of our intellectual property.

On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies. We commenced commercial sales of our first product FOTIVDA in the United States on March 22, 2021. We expect that any revenue we generate will fluctuate from quarter to quarter and year to year as a result of the timing and amount of the payments that we receive upon the sales of FOTIVDA and any future products, to the extent any are successfully commercialized, and license fees, research and development reimbursements, milestones, royalties and other payments received under our strategic partnerships. If we or our strategic partners fail to complete the development of our product candidates in a timely manner or to obtain or maintain regulatory approval for them, our ability to generate future revenue, and our results of operations and financial position, would be materially adversely affected.

Research and Development Expenses

Research and development expenses have historically consisted of expenses incurred in connection with the discovery and development of our product candidates. We recognize research and development expenses as they are incurred. These expenses consist primarily of:

- employee-related expenses, including salaries, bonuses, benefits, stock-based compensation and research-related overhead;
- external development-related expenses, including clinical trials, preclinical studies, consultants and other outsourced services;
- costs of acquiring and manufacturing drug development related materials and related distribution;
- costs associated with our regulatory and quality assurance operations and medical affairs;
- upfront license payments, milestones, sublicense fees and royalties related to in-licensed products and technology; and
- allocated expenses for facilities and information technology.

Research and development expenses is net of amounts reimbursed under our agreement with AstraZeneca for their respective share of development costs incurred by us under our joint development plans.

We anticipate that research and development expenses will remain consistent at current levels during the remainder of 2021 and increase in 2022, principally related to the enrollment of the TiNivo-2 Trial for the treatment of advanced refractory RCC, the manufacturing of ficlatuzumab clinical drug supply in 2022 for a potential registrational clinical trial in the HPV- HNSCC patient population that we plan to initiate in the first half of 2023, and a phase 1b clinical trial in AV-380 in cancer patients that we plan to initiate in the middle of 2022 and the related manufacturing of AV-380 clinical drug supply. These increases in 2022 will be partially offset by lower costs, principally related to the TIVO-3 Trial that was closed in the second half of 2021 following the FDA's approval of FOTIVDA on March 10, 2021. We anticipate that research and development expenses will be approximately \$30 million in 2021 in support of our existing pipeline plans. We expect costs for the TiNivo-2 trial to be approximately \$40 million to \$45 million over the next three or four years. The timing and nature of contemplated activities in 2022 will be conducted subject to the availability of sufficient financial resources.

Currently, we track direct external development expenses and direct salary on a program-by-program basis and allocate general-related expenses, such as indirect compensation, benefits and consulting fees, to each program based on the personnel resources allocated to such program. Facilities, IT costs and stock-based compensation are not allocated amongst programs and are considered overhead.

Uncertainties of Estimates Related to Research and Development Expenses

The process of conducting preclinical studies and clinical trials necessary to obtain FDA approval for each of our product candidates is costly and time-consuming. The probability of success for each product candidate and clinical trial may be affected by a variety of factors, including, among others, the risk benefit profile of the product candidates' clinical activity, investment in the program, competition, manufacturing capabilities and commercial viability.

At this time, we cannot reasonably estimate or know the nature, specific timing and estimated costs of the efforts that will be necessary to complete the development of our product candidates, or the period, if any, in which material net cash inflows may commence from sales of any approved products. This uncertainty is due to the numerous risks and uncertainties associated with developing drugs, including the uncertainty of:

- our ability to establish and maintain strategic partnerships, the terms of those strategic partnerships and the success of those strategic partnerships, if any, including the timing and amount of payments that we might receive from strategic partners;
- the scope, progress, results and costs of preclinical development, laboratory testing and clinical trials for any product candidate;
- the progress and results of our clinical trials;
- the costs, timing and outcome of regulatory review of our product candidates;

- the emergence of competing technologies and products and other adverse market developments;
- the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims; and
- additional manufacturing requirements.

As a result of the uncertainties associated with developing drugs, including those discussed above, we are unable to determine the exact duration and completion costs of current or future clinical stages of our product candidates, or when, or to what extent, we will generate revenues from the commercialization and sale of any of our product candidates for which we may obtain regulatory approval. Development timelines, probability of success and development costs vary widely. We anticipate that we will make determinations as to which additional programs to pursue and how much funding to direct to each program on an ongoing basis in response to the scientific and clinical success, if any, of each product candidate, as well as ongoing assessment of each product candidate's commercial potential. We will need to raise substantial additional capital in the future in order to fund the development of our preclinical and clinical product candidates.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of compensation, benefits and travel for employees in executive, finance, legal, human resource and commercial functions. Other selling, general and administrative expenses include professional fees for audit, tax, general legal, patent legal, investor relations, commercial, consulting services and directors' fees, as well as facility and information technology-related costs not otherwise included in research and development expenses.

We anticipate that selling, general and administrative expenses associated with the commercialization of FOTIVDA, principally related to our sales force, our marketing, market access and commercial capabilities, and general and administrative support will remain consistent at the current levels during the remainder of 2021 and increase in 2022, principally reflective of a full year of commercialization following the launch of FOTIVDA on March 22, 2021. We anticipate that selling, general and administrative expenses will be approximately \$60 million in 2021, including approximately \$40 million in commercial expenses and approximately \$20 million in general and administrative expenses.

Interest Expense, Net

Interest expense consists of interest, amortization of debt discount and amortization of deferred financing costs associated with our loans payable, and is shown net of interest income, which consists of interest earned on our cash, cash equivalents and marketable securities. The primary objective of our investment policy is capital preservation.

Income Taxes

We calculate our provision for income taxes on ordinary income based on our projected annual tax rate for the year. As of September 30, 2021, we are forecasting an effective tax-rate of 0% for the year ending December 31, 2021, and since we maintain a full valuation allowance on all of our deferred tax assets, we have recorded no income tax provision or benefit in the current quarter.

Critical Accounting Policies and Significant Judgments and Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q, which have been prepared in accordance with accounting principles generally accepted in the United States, or GAAP. The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect certain reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, the assessment of our ability to continue as a going concern, and the reported amounts of revenues and expenses during the reporting periods. Significant items subject to such estimates and assumptions include revenue recognition, clinical trial costs and contract research accruals, measurement of trade receivables net, measurement of stock-based compensation and estimates of our capital requirements over the next twelve months from the date of issuance of the consolidated financial statements. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Material changes in these estimates could occur in the future. Changes in estimates are recorded or reflected in our disclosures in the period in which they become known. Actual results may differ from our estimates if

past experience or other assumptions do not turn out to be substantially accurate. Our significant accounting policies are described in the notes to our consolidated financial statements appearing elsewhere in this Quarterly Report on Form 10-Q.

For a discussion of recent accounting pronouncements, refer to Note 3 – “Significant Accounting Policies – Recently Adopted Accounting Pronouncements”, to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Results of Operations

Comparison of Three and Nine Months Ended September 30, 2021 and 2020

Revenues (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
FOTIVDA U.S. product revenue, net	\$ 14,318	\$ —	\$ 14,318	100 %	\$ 22,119	\$ —	\$ 22,119	100 %
Partnership revenue - KKC	—	2,800	(2,800)	(100)%	—	2,800	(2,800)	(100)%
Partnership revenue - EUSA	855	800	55	7 %	2,530	2,333	197	8 %
Total revenues	\$ 15,173	\$ 3,600	\$ 11,573	321 %	\$ 24,649	\$ 5,133	\$ 19,516	380 %

Our total revenues increased by \$11.6 million, or 321%, to \$15.2 million in the three months ended September 30, 2021 from \$3.6 million in the same period in 2020 and by \$19.5 million, or 380%, to \$24.6 million in the nine months ended September 30, 2021 from \$5.1 million in the same period in 2020, principally due to the commencement of sales of our first commercial product FOTIVDA in the United States on March 22, 2021 for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies.

Partnership revenues from Kyowa Kirin Co., or KKC, decreased by \$2.8 million, or 100%, in the three and nine months ended September 30, 2021, compared to the same periods in 2020. On August 2, 2020, we earned a \$2.8 million development milestone payment from KKC for the acceptance of KKC’s investigational new drug, or IND, for a non-oncology formulation of tivozanib by the Pharmaceuticals and Medical Devices Agency of Japan. In the third quarter of 2020, we recognized this \$2.8 million development milestone as revenue in accordance with ASC 606. No milestones were earned in the three and nine months ended September 30, 2021.

Partnership revenues from EUSA increased by \$0.1 million, or 7%, and \$0.2 million, or 8%, in the three and nine months ended September 30, 2021, respectively, from the same periods in 2020.

FOTIVDA U. S. Product Revenue, Net (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Gross product revenue	\$ 16,978	\$ —	\$ 16,978	100 %	\$ 26,227	\$ —	\$ 26,227	100 %
Discounts and allowances	(2,660)	—	(2,660)	100 %	(4,108)	—	(4,108)	100 %
Product revenue, net	\$ 14,318	\$ —	\$ 14,318	100 %	\$ 22,119	\$ —	\$ 22,119	100 %

We commenced sales of our first commercial product FOTIVDA in the United States on March 22, 2021 for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies.

Cost of Products Sold (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
	Cost of products sold	\$ 1,744	\$ —	\$ 1,744	100 %	\$ 2,704	\$ —	\$ 2,704
Gross margin %	88 %	—	88 %	100 %	88 %	—	88 %	100 %

We commenced sales of our first commercial product FOTIVDA in the United States on March 22, 2021 for the treatment of adult patients with refractory advanced RCC following two or more prior systemic therapies. Cost of products sold is related to our product revenues for FOTIVDA and consists primarily of tiered royalty payments we are required to pay to KKC on all net sales of tivozanib in our North American territory, which range from the low to mid-teens as a percentage of net sales. Cost of products sold also consists of shipping and other third-party logistics and distribution costs for FOTIVDA. We consider regulatory approval of our product candidates to be uncertain and product manufactured prior to regulatory approval may not be sold unless regulatory approval is obtained. As such, the manufacturing costs for FOTIVDA incurred prior to regulatory approval were not capitalized as inventory but were expensed as research and development costs, which favorably impacted our gross margin. We anticipate that gross margins will be in the mid-to-high 80th percentile for the remainder of 2021 and in 2022.

Research and Development Expenses (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
	Tivozanib	\$ 5,514	\$ 4,796	\$ 718	15 %	\$ 13,997	\$ 14,160	\$ (163)
AV-380 Program in Cachexia	885	524	361	69 %	2,869	1,938	931	48 %
Ficlatuzumab	480	133	347	260 %	1,463	878	585	67 %
Overhead	623	407	216	53 %	1,848	1,129	719	64 %
Total research and development expenses	\$ 7,502	\$ 5,860	\$ 1,642	28 %	\$ 20,177	\$ 18,105	\$ 2,072	11 %

Our total research and development expenses increased by \$1.6 million, or 28%, to \$7.5 million in the three months ended September 30, 2021 from \$5.9 million in the same period in 2020.

Our total research and development expenses increased by \$2.1 million, or 11%, to \$20.2 million in the nine months ended September 30, 2021 from \$18.1 million in the same period in 2020.

Tivozanib expenses increased by \$0.7 million, or 15%, in the three months ended September 30, 2021 as compared to the same period in 2020, principally related to \$2.7 million in total increases for costs incurred in the third quarter of 2021 that were not incurred in the same period in 2020, including \$1.9 million in connection with start-up activities for the TiNivo-2 Trial that was initiated in the first quarter of 2021, \$0.5 million in connection with the medical affairs function in support of the commercial launch of FOTIVDA and \$0.3 million in certain consulting fees. These increases were partially offset by \$2.2 million in total decreases for costs incurred in the third quarter of 2020 that were not incurred in the same period in 2021, including \$0.5 million in connection with the tivozanib New Drug Application, or NDA, for relapsed or refractory advanced RCC following two or more prior systemic therapies and \$1.7 million in connection with drug substance manufacturing prior to marketing approval of tivozanib.

Tivozanib expenses decreased by \$0.2 million, or 1%, in the nine months ended September 30, 2021 as compared to the same period in 2020, principally related to \$7.4 million in total decreases for costs incurred in the nine months ended September 30, 2020 that were not incurred in the same period in 2021, including \$2.2 million in connection with the completion and review support for the tivozanib NDA for relapsed or refractory advanced RCC following two or more prior systemic therapies and the corresponding \$2.9 million application user fee pursuant to the Prescription Drug User Fee Act that was due upon the filing of the tivozanib NDA on March 31, 2020, \$1.7 million in connection with drug substance manufacturing prior to marketing approval of tivozanib and \$0.6 million in connection with lower expenses for the TIVO-3 trial that was closed in the second half of 2021 following FDA approval of FOTIVDA on March 10, 2021. These decreases

were partially offset by \$7.1 million in total increases for costs incurred in the nine months ended September 30, 2021 that were not incurred in the same period in 2020, including \$4.6 million in connection with start-up activities for the TiNivo-2 Trial that was initiated in the first quarter of 2021, \$2.1 million in connection with the medical affairs function in support of the commercial launch of FOTIVDA and \$0.4 million in certain consulting fees.

AV-380 expenses increased by \$0.4 million, or 69%, in the three months ended September 30, 2021 and by \$0.9 million, or 48%, in the nine months ended September 30, 2021 as compared to the same periods in 2020, respectively. These increases were principally due to the conduct of the phase 1 clinical trial of AV-380 in healthy volunteers that was initiated in the first quarter of 2021, partially offset by a decrease in pre-clinical development costs incurred in the nine months ended September 30, 2020 that were not incurred in the same period in 2021.

Ficlatuzumab expenses increased by \$0.3 million, or 260%, in the three months ended September 30, 2021 and by \$0.6 million, or 67%, in the nine months ended September 30, 2021 as compared to the same periods in 2020, respectively. These increases were principally related to the conduct of certain drug manufacturing activities in 2021 for tech transfer, partially offset by costs incurred in the first quarter of 2020 that were not incurred in 2021 in connection with the discontinued phase 2 clinical trial evaluating ficlatuzumab in combination with high-dose cytarabine versus high-dose cytarabine alone in patients with AML, which we referred to as the CyFi-2 trial, net of cost sharing with Biodesix.

We anticipate that research and development expenses will remain consistent at current levels during the remainder of 2021 and increase in 2022, principally related to the enrollment of the TiNivo-2 Trial for the treatment of advanced refractory RCC, the manufacturing of ficlatuzumab clinical drug supply in 2022 for a potential registrational clinical trial in the HPV- HNSCC patient population that we plan to initiate in the first half of 2023, and a phase 1b clinical trial in AV-380 in cancer patients that we plan to initiate in the middle of 2022 and the related manufacturing of AV-380 clinical drug supply. These increases in 2022 will be partially offset by lower costs, principally related to the TIVO-3 Trial that was closed in the second half of 2021 following the FDA's approval of FOTIVDA on March 10, 2021. We anticipate that research and development expenses will be approximately \$30 million in 2021 in support of our existing pipeline plans. We expect costs for the TiNivo-2 trial to be approximately \$40 million to \$45 million over the next three or four years. The timing and nature of contemplated activities in 2022 will be conducted subject to the availability of sufficient financial resources.

Selling, General and Administrative Expenses (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Selling, general and administrative expenses	\$ 15,142	\$ 5,800	\$ 9,342	161 %	\$ 45,162	\$ 13,209	\$ 31,953	242 %

Selling, general and administrative expenses increased by \$9.3 million, or 161%, to \$15.1 million in the three months ended September 30, 2021 from \$5.8 million in the same period in 2020. The \$9.3 million increase was principally related to \$9.0 million in total increases, including: (i) \$7.6 million in commercial launch initiatives incurred in the third quarter of 2021 that were not incurred in the same period in 2020, including \$4.5 million in connection with compensation costs related to the growth in our commercial infrastructure, including the hiring of the sales force, and \$3.1 million in connection with external commercial-launch activities in marketing, market access and commercial operations, (ii) \$0.7 million in other professional fees, and (iii) \$0.7 million in other compensation-related costs.

Selling, general and administrative expenses increased by \$32.0 million, or 242%, to \$45.2 million in the nine months ended September 30, 2021 from \$13.2 million in the same period in 2020. The \$32.0 million increase was principally related to \$31.4 million in total increases, including: (i) \$25.9 million in commercial launch initiatives incurred in the nine months ended September 30, 2021 that were not incurred in the same period in 2020, including \$14.3 million in connection with compensation and recruiting costs related to the growth in our commercial infrastructure, including the hiring of the sales force, and \$11.6 million in connection with external commercial-launch activities in marketing, market access and commercial operations, (ii) \$3.0 million in other professional fees and (iii) \$2.5 million in other compensation-related costs.

We anticipate that selling, general and administrative expenses associated with the commercialization of FOTIVDA, principally related to our sales force, our marketing, market access and commercial capabilities, and general and administrative support will remain consistent at the current levels during the remainder of 2021 and increase in 2022,

principally reflective of a full year of commercialization following the launch of FOTIVDA on March 22, 2021. We anticipate that selling, general and administrative expenses will be approximately \$60 million in 2021, including approximately \$40 million in commercial expenses and approximately \$20 million in general and administrative expenses.

Change in Fair Value of Expired PIPE Warrant Liability (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Change in fair value of expired PIPE Warrant liability	\$ —	\$ 86	\$ (86)	(100 %)	\$ 199	\$ 3,184	\$ (2,985)	(94)%

In May 2016, we issued PIPE Warrants, or the PIPE Warrants, in connection with a private placement financing and recorded the warrants as a liability. The PIPE Warrants were exercisable for a period of five years from the date of issuance until their scheduled expiration on May 16, 2021. The PIPE Warrants were subject to revaluation at each balance sheet date and any changes in fair value were recorded as a non-cash gain or (loss) in our Statement of Operations as a component of other income (expense). We recorded changes in the fair market value of the expired PIPE Warrants of \$0 and \$0.1 million in the three months ended September 30, 2021 and 2020, respectively, and \$0.2 million and \$3.2 million in the nine months ended September 30, 2021 and 2020, respectively.

In the three months ended September 30, 2020, we recorded an approximate non-cash gain of \$0.1 million in our Statement of Operations attributable to the decrease in the fair value of the PIPE Warrant liability that resulted from a decrease in our stock volatility rate and the shorter remaining term as the PIPE Warrants approach expiration in May 2021, partially offset by a higher stock price of \$5.94 on September 30, 2020 compared to the stock price of \$5.15 on June 30, 2020.

In the nine months ended September 30, 2021, we recorded an approximate non-cash gain of \$0.2 million in our Statement of Operations attributable to the decrease in the fair value of the PIPE Warrant liability that resulted from the expiration of the PIPE Warrants on May 16, 2021.

In the nine months ended September 30, 2020, we recorded an approximate non-cash gain of \$3.2 million in our Statement of Operations attributable to the decrease in the fair value of the PIPE Warrant liability that resulted from a lower stock price of \$5.94 on September 30, 2020 compared to the stock price of \$6.20 on December 31, 2019, as well as a decrease in our stock volatility rate and the shorter remaining term as the PIPE Warrants approached the scheduled expiration in May 2021.

Interest Expense, net (in thousands)

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Interest expense, net	\$ (1,153)	\$ (419)	\$ (734)	175 %	\$ (2,892)	\$ (1,083)	\$ (1,809)	167 %

Interest expense, net increased by \$0.7 million, or 175%, in the three months ended September 30, 2021 and by \$1.8 million, or 167%, in the nine months ended September 30, 2021, as compared to the same periods in 2020.

These increases were principally due to higher loan balances on a quarter-to-quarter basis under the 2020 Loan Amendment and 2021 Loan Amendment, as defined below, that were entered into with Hercules Capital Inc. and certain of its affiliates, or Hercules, on August 7, 2020 and February 1, 2021, respectively. See “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Hercules Loan Facility” below for a description of the 2020 Loan Amendment and 2021 Loan Amendment.

We anticipate that interest expense, net will remain at the current level during the remainder of 2021 and in 2022 due to the \$35.0 million loan balance as of September 30, 2021 and the extended interest-only period through September 30, 2022 pursuant to the 2020 Loan Amendment and 2021 Loan Amendment with Hercules.

Liquidity and Capital Resources

We have financed our operations to date primarily through private placements and public offerings of our common stock, license fees, milestone payments and research and development funding from strategic partners, loan proceeds and commercial sales of our first commercial product FOTIVDA in the United States. As of September 30, 2021 we had cash, cash equivalents and marketable securities of approximately \$94.0 million. See “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources—Liquidity and Going Concern” below and Note 1 to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for a further discussion of our liquidity. Currently, our funds are invested in a United States government money market fund.

The following table sets forth the primary sources and uses of cash for each of the periods set forth below (in thousands):

	For the Nine Months Ended September 30,	
	2021	2020
Net cash used in operating activities	\$ (45,073)	\$ (25,103)
Net cash used in investing activities	(25,228)	(11,152)
Net cash provided by financing activities	77,380	46,318
Net increase in cash and cash equivalents	\$ 7,079	\$ 10,063

Our operating activities used cash of \$45.1 million and \$25.1 million in the nine months ended September 30, 2021 and 2020, respectively. Cash used in operations was principally due to our net loss adjusted for non-cash items and changes in working capital.

Our investing activities used cash of \$25.2 million and \$11.2 million in the nine months ended September 30, 2021 and 2020, respectively, principally due to net changes in the purchases and maturities of marketable securities.

Our financing activities provided cash of \$77.4 million and \$46.3 million in the nine months ended September 30, 2021 and 2020, respectively. In the nine months ended September 30, 2021, we raised approximately \$78.1 million in funding, including approximately \$51.7 million in net proceeds from the sale of approximately 6.9 million shares of our common stock in an underwritten public offering in March 2021, approximately \$19.9 million in new loan funding pursuant to the 2020 Loan Amendment and 2021 Loan Amendment with Hercules, net of transaction costs, approximately \$3.4 million in net proceeds from the sale of approximately 0.3 million shares of our common stock in March 2021 pursuant to our “at-the-market” sales agreement with SVB Leerink LLC, or SVB Leerink, which we refer to as the SVB Leerink Sales Agreement, and approximately \$3.1 million in proceeds from the exercise of Offering Warrants. In July 2021, we paid approximately \$0.8 million in an end-of-term loan payment pursuant to the December 2017 Loan Amendment with Hercules.

In the nine months ended September 30, 2020, we raised approximately \$52.7 million, including approximately \$47.7 million in net proceeds from the sale of approximately 9.7 million shares of our common stock in an underwritten public offering in June 2020 and approximately \$5.0 million in new loan funding pursuant to the 2020 Loan Amendment with Hercules, net of transaction costs, and paid approximately \$6.5 million in principal payments pursuant to our then December 2017 Loan Agreement with Hercules.

Hercules Loan Facility (\$45 Million Loan Facility - \$10 Million Committed Funding Remaining)

On May 28, 2010, the Company entered into a loan and security agreement, or the First Loan Agreement with Hercules. The First Loan Agreement was subsequently amended in March 2012, September 2014, May 2016 and amended and restated in December 2017, or the 2017 Loan Agreement.

On August 7, 2020, we entered into a first amendment to the 2017 Loan Agreement or the 2020 Loan Amendment, to provide us, subject to certain terms and conditions, with additional term loans in an aggregate principal amount of up to \$35.0 million, or the 2020 Loan Facility, to be used to repay in full the 2017 Loan Agreement and for general working capital purposes. The 2020 Loan Facility is available to us in four tranches, the first of which, in the amount of \$15.0 million, was made available to us immediately upon the closing of the 2020 Loan Amendment. We used the \$15.0 million in proceeds of the first tranche as follows: approximately \$9.7 million was used to repay the outstanding

balance of the 2017 Loan Agreement in full, and approximately \$5.3 million was used for general working capital purposes. In connection with the 2020 Loan Amendment, we incurred approximately \$0.3 million in loan issuance costs paid directly to Hercules, which are accounted for as a loan discount. The 2020 Loan Amendment was accounted for as a loan modification in accordance with ASC 470-50.

The remaining \$20.0 million of term loans is available to us under the 2020 Loan Facility subject to, among other terms and conditions, the achievement of the following milestones: (i) Tranche Two in the initial amount of \$10.0 million was available through June 30, 2021 upon achieving Performance Milestone I for FDA approval of FOTIVDA, (ii) the third tranche, or Tranche Three, in the amount of \$5.0 million, was initially available from July 1, 2021 through January 31, 2022 if we were to achieve \$20.0 million in net product revenues from sales of FOTIVDA, following FDA approval, by no later than December 31, 2021, or Performance Milestone II, and (iii) the fourth tranche, or Tranche Four, in the amount of \$5.0 million, is available through June 30, 2022 if we achieve both Performance Milestone I and Performance Milestone II, and if Hercules consents to the advancement of Tranche Four.

The 2020 Loan Amendment also amended the 2017 Loan Agreement by: (i) extending maturity of the loans from July 1, 2021 until September 1, 2023, which is extendable to September 1, 2024 upon our option if the Tranche Three funding has occurred, (ii) providing for an interest-only period beginning on the closing date of 2020 Loan Amendment and ending September 30, 2021, which period may be extended through September 30, 2022 provided we achieved Performance Milestone I, and further extendable through March 31, 2023 if the Tranche Three funding has occurred, and (iii) revising the interest rate to the greater of 9.65% and an amount equal to 9.65% plus the prime rate minus 3.25% (subject to a 15% cap). Principal payments were initially scheduled to commence on October 1, 2021, at the earliest, as described above. The interest rate as of September 30, 2021 was 9.65%.

Pursuant to the terms of the Loan Agreement, principal will be repaid in equal monthly installments following the conclusion of the interest-only period. We may prepay all of the outstanding principal and accrued interest under the Loan Agreement, subject to a prepayment charge up to 3.0% in the first year following the closing of the 2020 Loan Amendment, decreasing to 2.0% in year two and 1.0% in year three. We are obligated to make an end-of-term payment of (i) 6.95% of the aggregate amount of loan funding received under the Loan Agreement on the earlier of the maturity of the loans or the date on which we prepay the outstanding loan balance in full, and (ii) an approximate \$0.8 million payment due on the earlier of July 1, 2021 or the date on which we prepay the outstanding loan balance in full. This payment was made on July 1, 2021.

The Loan Agreement includes (i) a financial covenant that we maintain minimum unrestricted cash positions of \$10.0 million through the date the Second Tranche funding is received, \$15.0 million through the date the Third Tranche funding is received and \$10.0 million thereafter through the maturity of the Loan Agreement, and (ii) an operating covenant that we achieve greater than or equal to 75% of our forecasted net product revenues from our sales of tivozanib over a six month trailing period, as defined and measured on a monthly basis, commencing upon the earlier to occur of (x) the Third Tranche funding and (y) the month of April 2022. The Loan Agreement also includes various other affirmative and negative covenants, including covenants to deliver certain financial reports; to maintain insurance coverage; and to refrain from transferring assets, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, and suffering a change in control, in each case subject to certain exceptions.

On February 1, 2021, we entered into the 2021 Loan Amendment. The 2021 Loan Amendment increased the aggregate principal amount of loans available under the 2020 Loan Facility from up to \$35.0 million to up to \$45.0 million following FDA approval of FOTIVDA. The 2021 Loan Amendment also (i) increased Tranche Two funding upon achieving Performance Milestone I from \$10.0 million to \$20.0 million, (ii) increased the amount of net product revenues from sales of FOTIVDA required for us to achieve Performance Milestone II from \$20.0 million to \$35.0 million, and changed the deadline for achieving Performance Milestone II from December 31, 2021 to April 1, 2022, and (iii) increased the amount of unrestricted cash required for us to satisfy the minimum financial covenant during the period between receiving Tranche Two funding and Tranche Three funding from \$10.0 million to \$15.0 million. In connection with the 2021 Loan Amendment, we incurred approximately \$0.1 million in loan issuance costs paid directly to Hercules, which are accounted for as a loan discount.

On March 11, 2021, we completed the \$20.0 million drawdown of Tranche Two funding under the 2021 Loan Amendment that was made available in connection with the achievement of Performance Milestone I upon FDA approval of FOTIVDA on March 10, 2021. The achievement of Performance Milestone I extended the interest-only period by twelve months from September 30, 2021 to September 30, 2022 and increased the amount of unrestricted cash required for

us to satisfy the minimum financial covenant during the period between receiving Tranche Two funding and Tranche Three funding from \$10.0 million to \$15.0 million.

As of September 30, 2021, the total principal balance was \$35.0 million, principal payments are scheduled to commence on October 1, 2022 and the corresponding end-of-term payments under the 2020 Loan Facility, in the aggregate amount of approximately \$2.4 million, are due upon the current loan maturity date of September 1, 2023. As of September 30, 2021, \$10.0 million remains available to us in committed funding under the 2020 Loan Facility, including \$5.0 million for Tranche Three funding upon the achievement of Performance Milestone II for \$35.0 million in net product revenues from sales of FOTIVDA and \$5.0 million in Tranche Four funding contingent upon the achievement of both Performance Milestone I and Performance Milestone II, and subject to the consent of Hercules. The unamortized discount to be recognized over the remainder of the loan period was approximately \$2.0 million and \$1.2 million as of September 30, 2021 and December 31, 2020, respectively. Per the 2017 Loan Agreement, the end-of-term payment of approximately \$0.8 million was due and paid on July 1, 2021.

Obligations under the Loan Agreement are secured by substantially all of our assets, excluding intellectual property. The Loan Agreement provides that certain events shall constitute a default by us, including failure by us to pay amounts under the Loan Agreement when due; breach or default in the performance of any covenant under the Loan Agreement by us, subject to certain cure periods; our insolvency and certain other bankruptcy proceedings involving us; our default of obligations involving indebtedness in excess of \$0.5 million; and the occurrence of an event or circumstance that would have a material adverse effect upon our business.

We have determined that the risk of subjective acceleration under the material adverse events clause included in the Loan Agreement is remote and, therefore, have classified the outstanding principal amount in long-term liabilities based on the timing of scheduled principal payments. As of September 30, 2021, we are in compliance with all of the loan covenants and, through the date of this filing, the lenders have not asserted any events of default under the Loan Agreement. We do not believe that there has been a material adverse change as defined in the Loan Agreement.

Public Offering – March 2021

On March 26, 2021, we completed an underwritten public offering of 6,900,000 shares of our common stock, including the full exercise by the underwriters of their option to purchase an additional 900,000 shares, at the public offering price of \$8.00 per share for gross proceeds of approximately \$55.2 million. The net offering proceeds to us were approximately \$51.7 million after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Public Offering – June 2020

On June 19, 2020, we completed an underwritten public offering of 9,725,000 shares of our common stock, including the partial exercise by the underwriters of their option to purchase an additional 1,225,000 shares, at the public offering price of \$5.25 per share for gross proceeds of approximately \$51.1 million. Three stockholders each beneficially holding more than 5% of our voting securities, including an entity affiliated with New Enterprise Associates and two other stockholders purchased an aggregate of 4,503,571 shares in this offering at the same public offering price per share as the other investors. At such time, entities affiliated with New Enterprise Associates (collectively) beneficially held more than 5% of our voting securities. The net offering proceeds to us were approximately \$47.7 million after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Sales Agreement with SVB Leerink (\$22 Million Availability Future Stock Sales)

In February 2018, we entered into the SVB Leerink Sales Agreement with SVB Leerink pursuant to which we may issue and sell shares of our common stock from time to time up to an aggregate amount of \$50.0 million, at our option, through SVB Leerink as our sales agent, with any sales of common stock through SVB Leerink being made by any method that is deemed an “at-the-market offering” as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, or in other transactions. Any such shares of common stock will be sold pursuant to a prospectus supplement filed under the 2020 Shelf, as defined below. We agreed to pay SVB Leerink a commission of up to 3% of the gross proceeds of any sales of common stock pursuant to the SVB Leerink Sales Agreement. We sold 470,777 shares, 1,251,555 shares, 1,070,175 shares and 330,688 shares pursuant to the SVB Leerink Sales Agreement, resulting in approximate proceeds net of commissions of \$10.3 million, \$7.5 million, \$5.9 million and \$3.4 million in the fourth quarter of 2018, February 2019,

November 2020 and March 2021, respectively. As of September 30, 2021, approximately \$22.2 million was available for issuance in connection with future stock sales pursuant to the SVB Leerink Sales Agreement.

Universal Shelf Registration Statement

On November 9, 2020, we filed a shelf registration statement on Form S-3 with the SEC, which covers the offering, issuance and sale of up to \$300.0 million of our common stock, preferred stock, debt securities, warrants and/or units or the 2020 Shelf. The 2020 Shelf (File No. 333-249982) was declared effective by the SEC on November 18, 2020 and was filed to replace our then existing shelf registration statement, which was terminated. As of September 30, 2021, there was approximately \$213.0 million available for future issuance of our common stock, preferred stock, debt securities, warrants and/or units.

Expired Offering Warrants from April 2019 Public Offering – Expiration Date of April 8, 2021

In April 2019, we completed an underwritten public offering of 2,173,913 shares of our common stock and warrants to purchase an aggregate of 2,500,000 shares of our common stock, which we refer to herein as the Offering Warrants, including warrants to purchase an aggregate of 326,086 shares of our common stock sold pursuant to the underwriter's partial exercise of its overallotment option, at the public offering price of \$11.40 per share and \$0.10 per warrant for gross proceeds of approximately \$25.0 million. The Offering Warrants were immediately exercisable upon issuance at an exercise price of \$12.50 per share, subject to adjustment in certain circumstances, and expired two years from the date of issuance on April 8, 2021. Any Offering Warrants that had not been exercised for cash prior to their expiration were to be automatically exercised via cashless exercise on the expiration date. The shares and warrants were issued separately and were separately transferable. An entity affiliated with New Enterprise Associates purchased 434,782 shares and warrants to purchase an aggregate of 434,782 shares in this offering at the same public offering price per share as the other investors. At such time, entities affiliated with New Enterprise Associates (collectively) beneficially held more than 5% of our voting securities. The net offering proceeds to us were approximately \$22.8 million after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

In March 2021, Offering Warrants exercisable for 247,391 shares of common stock had been exercised, for approximately \$3.2 million in cash proceeds. On April 8, 2021, all of the remaining 2,252,609 Offering Warrants expired and no shares of our common stock were issued via automatic cashless exercises of unexercised warrants on the date of expiration as the \$12.50 exercise price was greater than our closing stock price of \$7.01 on April 8, 2021.

Expired Offering Warrants from May 2016 Private Placement – Expiration Date of May 16, 2021

In May 2016, we entered into a securities purchase agreement with a select group of qualified institutional buyers, institutional accredited investors and accredited investors pursuant to which we sold 1,764,242 units, at a price of \$9.65 per unit, for gross proceeds of approximately \$17.0 million. Each unit consisted of one share of our common stock and a PIPE Warrant to purchase one share of our common stock. The PIPE Warrants had an exercise price of \$10.00 per share and expired five years from the date of issuance on May 16, 2021. Certain of our directors and executive officers purchased an aggregate of 54,402 units in this offering at the same price as the other investors. The net offering proceeds to us were approximately \$15.4 million after deducting placement agent fees and other offering expenses payable by us. PIPE Warrants exercisable for 80,309 shares of common stock had been exercised for approximately \$0.8 million in cash proceeds and all of the remaining 1,683,933 PIPE Warrants expired on May 16, 2021.

Liquidity and Going Concern

We have devoted substantially all of our resources to our drug development efforts, comprised of research and development, manufacturing, conducting clinical trials for our product candidates, protecting our intellectual property and general and administrative functions relating to these operations. Our future success is dependent on our ability to commercialize FOTIVDA in the United States and develop our clinical stage assets and, ultimately, upon our ability to create shareholder value.

On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies. We anticipate that we will continue to incur significant operating expenses for the foreseeable future as we commercialize FOTIVDA in the United States and continue our planned development activities for our clinical stage assets. Our future product revenues will depend upon the size of markets in which FOTIVDA, and any future products, have received approval, and our ability to achieve sufficient

market acceptance, reimbursement from third-party payers and adequate market share for FOTIVDA and any future products in those markets. The likelihood of our long-term success must be considered in light of the expenses, difficulties and potential delays that may be encountered in the development and commercialization of new pharmaceutical products, competitive factors in the marketplace and the complex regulatory environment in which we operate. Absent the realization of sufficient revenues from product sales to support our cost structure, we may never attain or sustain profitability. We may require substantial additional funding to continue to advance our pipeline of clinical stage assets, and the timing and nature of these activities will be conducted subject to the availability of sufficient financial resources, principally product sales of FOTIVDA in the United States.

During the nine months ended September 30, 2021, we received an aggregate of approximately \$94.7 million in funding, including approximately \$58.2 million in equity funding, approximately \$19.1 million in net loan funding from Hercules, approximately \$15.6 million in cash receipts from the product sales of FOTIVDA in the United States and approximately \$1.8 million in partnership cost sharing payments.

The approximate \$58.2 million in equity funding included the \$51.7 million in net proceeds from the sale of approximately 6.9 million shares of our common stock in an underwritten public offering in March 2021, approximately \$3.4 million in net proceeds from the sale of approximately 0.3 million shares of our common stock in March 2021 pursuant to our SVB Leerink Sales Agreement, and approximately \$3.1 million in proceeds from the exercise of Offering Warrants.

The approximate \$19.1 million in net loan funding from Hercules included \$20.0 million in new loan funding pursuant to the 2020 Loan Amendment and 2021 Loan Amendment upon FDA approval of FOTIVDA, net of payments of approximately \$0.1 million in transaction costs related to the 2021 Loan Amendment and the approximate \$0.8 million end-of-term payment pursuant to the December 2017 Loan Amendment.

We believe that our \$94.0 million in cash, cash equivalents and marketable securities as of September 30, 2021, along with net product revenues from the commercial launch of FOTIVDA in the United States, would enable us to maintain our current operations for a period of at least 12 months following the filing of this Quarterly Report on Form 10-Q.

In 2021, we anticipate that research and development expenses will be approximately \$30 million and selling, general and administrative expenses will be approximately \$60 million, including approximately \$40 million in commercial expenses and approximately \$20 million in general and administrative expenses.

However, there are numerous risks and uncertainties associated with research, development and commercialization of pharmaceutical products, including, without limitation, risks related to our ability to generate product revenue from sales of FOTIVDA in the United States, which became commercially available in the United States on March 22, 2021. Accordingly, our future funding requirements may vary from our current expectations and will depend on many factors, including, but not limited to:

- the cost of commercialization activities of FOTIVDA in the United States and any of our product candidates that may be approved for sale, including marketing, sales and distribution costs;
- the cost of manufacturing FOTIVDA in the United States, our product candidates and any additional products we may successfully commercialize;
- the impact of COVID-19 on our operations, business and prospects;
- our ability to establish and maintain strategic partnerships, licensing or other arrangements and the financial terms of such agreements;
- the number and characteristics of the product candidates we pursue;
- the scope, progress, results and costs of researching and developing our product candidates, and of conducting preclinical and clinical trials;
- the timing of, and the costs involved in, completing our clinical trials and obtaining regulatory approvals for our product candidates;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, including litigation costs and the outcome of such litigation;

- the absence of any breach, acceleration event or event of default under our Loan Agreement, or under any other agreements with third parties;
- the cost and outcome of any legal actions against us;
- the timing, receipt and amount of sales of, or royalties on, tivozanib and our future products, if any; and
- general economic, industry and market conditions.

We may require substantial additional funding to continue to advance our pipeline of clinical stage assets. We may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities may result in additional dilution to our stockholders. If we raise additional funds through the issuance of debt securities or preferred stock or through additional credit facilities, these securities and/or the loans under credit facilities could provide for rights senior to those of our common stock and could contain covenants that would restrict our operations. Additional funds may not be available when we need them, on terms that are acceptable to us, or at all. For example, we may never achieve the milestones specified in the Loan Agreement that would allow us to access the remaining \$10.0 million in available credit. We also expect to seek additional funds through arrangements with collaborators, licensees or other third parties. These arrangements would generally require us to relinquish or encumber rights to some of our technologies or product candidates, and we may not be able to enter into such arrangements on acceptable terms, if at all. If we are unable to raise substantial additional funding to advance our pipeline of clinical stage assets, whether on terms that are acceptable to us, or at all or if we were to default under the Loan Agreement, and Hercules accelerated the then remaining principal payments and fees due under the loan, then we may be required to:

- delay, limit, reduce or terminate our clinical trials or other development activities for one or more of our product candidates; and/or
- delay, limit, reduce or terminate our establishment of sales and marketing capabilities or other activities that may be necessary to commercialize our product candidates, if approved.

Contractual Obligations and Commitments

There have been no additional material changes to our contractual obligations and commitments outside the ordinary course of business from those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020 filed with the SEC on March 16, 2021, except as discussed below.

On March 11, 2021, we completed the \$20.0 million drawdown of Tranche Two funding under the 2021 Loan Amendment with Hercules that was made available in connection with the achievement of Performance Milestone I upon FDA approval of FOTIVDA on March 10, 2021. The achievement of Performance Milestone I extended the interest-only period by twelve months from September 30, 2021 to September 30, 2022. For more information, see “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources —Hercules Loan Facility”, as well as Note 6, “—Hercules Loan Facility” of the Notes to our consolidated financial statements, each included elsewhere in this Quarterly Report on Form 10-Q.

Off-Balance Sheet Arrangements

We did not have, during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under applicable SEC rules.

Item 4. Controls and Procedures.

Our management, with the participation of our President and Chief Executive Officer (our principal executive officer) and our Chief Financial Officer (our principal financial officer), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of September 30, 2021. The term “disclosure controls and procedures” means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that any controls

and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and our management necessarily applied its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on this evaluation, our President and Chief Executive Officer and Chief Financial Officer concluded that as of September 30, 2021, our disclosure controls and procedures were effective at the reasonable assurance level.

During the nine months ended September 30, 2021, we implemented certain internal controls in connection with our product sales of FOTIVDA upon the commercial launch in the United States on March 22, 2021. There were no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three and nine months ended September 30, 2021, which have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1A. Risk Factors

You should carefully consider the risks described below in addition to the other information set forth in this Quarterly Report on Form 10-Q, including the Management's Discussion and Analysis of Financial Condition and Results of Operations section and the consolidated financial statements and related notes. These risks, some of which have occurred and any of which may occur in the future, can have a material adverse effect on our business, financial condition, results of operations or the price of our publicly traded securities. The risks described below are not the only risks we face. Additional risks and uncertainties not currently known to us, or that we currently deem to be immaterial, may occur or become material in the future and adversely affect our business, reputation, financial condition, results of operations or the price of our publicly traded securities. Therefore, historical operating results, financial and business performance, events and trends are often not a reliable indicator of future operating results, financial and business performance, events or trends. If any of the following risks occurs, our business, financial condition, and results of operations and future growth prospects could be materially and adversely affected.

Risks Related to Our Financial Position and Need for Additional Capital

We have incurred significant operating losses since inception and anticipate that we will continue to incur significant operating expenses for the foreseeable future. It is uncertain if we will ever achieve or sustain profitability.

We have a history of incurring operating losses and as of September 30, 2021, we had an accumulated deficit of \$667.3 million. To date, we have not generated significant revenues from the sale of products. Our operating losses have resulted principally from costs incurred in our discovery and development activities. On March 10, 2021, the FDA approved FOTIVDA in the United States for the treatment of adult patients with relapsed or refractory advanced RCC following two or more prior systemic therapies. We anticipate that we will continue to incur significant operating expenses for the foreseeable future as we commercialize FOTIVDA in the United States and continue our planned development activities for our clinical stage assets. Our future product revenues will depend upon the size of markets in which FOTIVDA, and any future products, have received approval, and our ability to achieve sufficient market acceptance, reimbursement from third-party payers and adequate market share for FOTIVDA and any future products in those markets. The likelihood of our long-term success must be considered in light of the expenses, difficulties and potential delays to be encountered in the development and commercialization of new pharmaceutical products, competitive factors in the marketplace and the complex regulatory environment in which we operate.

If we do not effectively manufacture, market and sell FOTIVDA in the United States and if we do not successfully develop, obtain and maintain regulatory approval for our existing and future pipeline of product candidates we may never generate sufficient revenues from product sales to support our cost structure in order to attain or sustain profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the market price of our common stock and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations.

We may require substantial additional funding to advance our pipeline of clinical stage assets, and a failure to obtain this necessary capital when needed would force us to delay, limit, reduce or terminate our research, product development or commercialization efforts.

We believe that our \$94.0 million in cash, cash equivalents and marketable securities as of September 30, 2021, along with net product revenues from the commercial launch of FOTIVDA in the United States, would enable us to maintain our current operations for a period of at least 12 months following the filing of this Quarterly Report on Form 10-Q.

However, there are numerous risks and uncertainties associated with the research, development and commercialization of pharmaceutical products including, without limitation, risks related to our ability to generate product revenue from sales of FOTIVDA in the United States, which became commercially available in the United States in March 2021. Accordingly, our future capital requirements may vary from our current expectations and depend on many factors, including but not limited to:

- the cost of commercialization activities of FOTIVDA in the United States and any of our product candidates that may be approved for sale, including marketing, sales and distribution costs;

- the cost of manufacturing FOTIVDA in the United States, our product candidates and any additional products we may successfully commercialize;
- the impact of COVID-19 on our operations, business and prospects;
- our ability to establish and maintain strategic partnerships, licensing or other arrangements and the financial terms of such agreements;
- the number of product candidates we pursue as well as the development needs and opportunities for each product candidate;
- the scope, progress, results and costs of researching and developing our product candidates and of conducting preclinical and clinical trials;
- the timing of, and the costs involved in, completing our clinical trials and obtaining regulatory approvals for our product candidates;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, including litigation costs and the outcome of such litigation;
- the absence of any breach, acceleration event or event of default under our Loan Agreement, or under any other agreements with third parties;
- the cost and outcome of any legal actions against us;
- the timing, receipt and amount of sales of, or royalties on, FOTIVDA and our future products, if any;
- and general economic, industry and market conditions.

We may require substantial additional funding to advance our pipeline of clinical stage assets. We may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities may result in additional dilution to our stockholders. If we raise additional funds through the issuance of debt securities or preferred stock or through additional credit facilities, these securities and/or the loans under credit facilities could provide for rights senior to those of our common stock and could contain covenants that would restrict our operations. Additional funds may not be available when we need them, on terms that are acceptable to us, or at all. For example, we may never achieve the milestones specified in the Loan Agreement that would allow us to access the remaining \$10.0 million in available credit. We also expect to seek additional funds through arrangements with collaborators, licensees or other third parties. These arrangements would generally require us to relinquish or encumber rights to some of our technologies or product candidates, and we may not be able to enter into such arrangements on acceptable terms, if at all.

If we are unable to raise substantial additional funding to advance our pipeline of clinical stage assets, whether on terms that are acceptable to us, or at all, or if we were to default under the Loan Agreement and Hercules accelerates the then remaining principal payments and fees due under the Loan Agreement, then we may be required to:

- delay, limit, reduce or terminate our clinical trials or other development activities for one or more of our product candidates; and/or
- delay, limit, reduce or terminate our establishment of sales and marketing capabilities or other activities that may be necessary to commercialize our product candidates, if approved.

Failure to comply with the covenants or payment obligations under the Loan Agreement could result in an event of default, which could materially and adversely affect our business and our financial condition.

The Loan Agreement includes certain financial and operational covenants and provides for certain occurrences that constitute events of default. Certain of those covenants may be out of our control, such as failure to achieve net product revenue at a certain percentage of projected net product revenue. Potential events of default also include circumstances occurring that would have a material adverse effect on our business, our insolvency or bankruptcy, or default on our other obligations or agreements. If we fail to make payments when due, breach any operational covenant or have any event of default, Hercules could require us to immediately repay all outstanding principal and accrued interest on the loan, plus a prepayment charge, which could have a material adverse effect on our business and financial condition.

We have only recently transitioned from a development stage biopharmaceutical company to a commercial stage biopharmaceutical company, which may make it difficult for you to evaluate the success of our business to date and to assess our future viability.

Other than the marketing approvals for FOTIVDA received by our partner EUSA and the FDA marketing approval for FOTIVDA received in the United States in March 2021, all of our product candidates are in the development stage. We have only recently demonstrated our ability to manufacture a commercial scale medicine, or arrange for a third party to do so, and have not yet demonstrated our ability to conduct significant sales and marketing activities necessary for successful commercialization. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had more experience commercializing our product candidates. In addition, as a newly commercial stage business, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors. To be profitable, we will need to successfully transition from a company with a research and development focus to a company capable of supporting commercial activities. We may not be successful in such a transition.

Risks Related to Development and Commercialization of Our Product Candidates

In the near term, we are substantially dependent on the success of FOTIVDA (tivozanib). If we are unable to successfully commercialize FOTIVDA or maintain marketing approval for FOTIVDA in its approved indication, or if we are unable to complete planned or ongoing clinical development of tivozanib to obtain marketing approval for tivozanib in other indications, either alone or with our collaborators, or if we experience significant delays in doing so, our business could be substantially harmed.

Our prospects are substantially dependent on our ability to successfully commercialize FOTIVDA in the United States and maintain marketing approval for FOTIVDA in the United States, or through EUSA, in those countries outside the United States where FOTIVDA is currently approved. We are also dependent on the success of tivozanib in clinical development and our ability to obtain additional marketing approvals for tivozanib in one or more other indications.

The success of FOTIVDA will depend on a number of factors, including the following:

- our ability to successfully commercially launch FOTIVDA in the United States;
- commercial awareness of FOTIVDA and commercial acceptance by patients, the medical community and third-party payors;
- our ability to gain access to customers during the COVID-19 pandemic;
- our ability to successfully enroll and complete clinical trials of tivozanib, including the DEDUCTIVE trial and the TiNivo-2 Trial;
- a continued acceptable safety, tolerability and efficacy profile that is satisfactory to applicable regulatory authorities following any marketing approval;
- timely receipt of marketing approvals from applicable regulatory authorities such as the FDA;
- the performance of the contract research organizations, or CROs, we have hired to manage our clinical studies, as well as that of our collaborators and other third-party contractors;
- the extent of any future post-marketing approval commitments to applicable regulatory authorities;
- maintenance of existing or establishment of new supply arrangements with third-party raw materials suppliers and manufacturers including with respect to the supply of active pharmaceutical ingredient for tivozanib and finished drug product that is appropriately packaged for sale;
- adequate ongoing availability of raw materials and drug product for clinical development and any commercial sales;
- obtaining and maintaining patent, trade secret protection and regulatory exclusivity, both in the United States and internationally, including our ability to maintain our license agreement with KKC;
- protection of our rights in our intellectual property portfolio, including our ability to maintain our license agreement with KKC; and
- our ability to compete with other therapies.

Many of these factors are beyond our control. If we are unable to successfully commercialize FOTIVDA in the United States or to develop or receive marketing approval for tivozanib in other indications, on our own or with our collaborators, or experience delays as a result of any of these factors or otherwise, our business could be substantially harmed. Further, while we have recorded a total of 619 commercial prescriptions during the third quarter of 2021, it is highly uncertain whether prescriptions will continue to increase each month or each quarter.

FOTIVDA, or any one of our product candidates that may receive marketing approval in the future, may fail to achieve the degree of market acceptance by physicians, patients, third-party payors and others in the medical community necessary for commercial success and the market opportunity for FOTIVDA or any one of our product candidates may be smaller than our estimates.

Despite the recent FDA marketing approval of FOTIVDA in the United States, FOTIVDA, or any one of our product candidates that may be approved in the future by the appropriate regulatory authorities for marketing and sale, may nonetheless fail to gain sufficient market acceptance by physicians, patients, third-party payors and others in the medical community. Physicians are often reluctant to switch their patients from existing therapies even when new and potentially more effective or convenient treatments enter the market. There are already a number of therapies on the market competitive to tivozanib, as well as our other product candidates, in indications we intend to target.

Efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may not be successful. COVID-19 related restrictions have posed challenges for gaining in-person access to customers, prescribers, other healthcare professionals and to certain institutions that remain closed to industry representatives. In light of the COVID-19 pandemic, we designed our strategic commercial approach for FOTIVDA to be flexible by building remote as well as in-person customer engagement capabilities in preparation for commercialization. However, changes to standard sales and marketing practices resulting from the COVID-19 pandemic, including the shift from in-person to telephonic and virtual interactions with healthcare professionals, have caused, and may continue to cause, challenges to our ability to successfully commercialize FOTIVDA.

If FOTIVDA, or any of our product candidates that may be approved for marketing and sale in the future, does not achieve an adequate level of market acceptance, we may not generate significant revenues and we may not become profitable. The degree of market acceptance of FOTIVDA, or any of our product candidates that may be approved for marketing and sale in the future, will depend on a number of factors, including:

- the efficacy and safety of the product;
- the advantages of the product compared to competitive therapies;
- the number of competitors approved for similar uses;
- our ability to gain access to customers during the COVID-19 pandemic;
- the relative promotional effort and marketing success of us as compared with our competitors;
- the prevalence and severity of any side effects;
- how the product is positioned in physician treatment guidelines and pathways;
- our ability to offer the product for sale at competitive prices;
- the product's tolerability, convenience and ease of administration compared to alternative treatments;
- the willingness of the target patient population to try, and of physicians to prescribe, the product;
- limitations or warnings, including use restrictions, contained in the product's approved labeling;
- the strength of sales, marketing and distribution support;
- the timing of market introduction of our approved products as well as competitive products;
- adverse publicity about the product or favorable publicity about competitive products;
- potential product liability claims;
- changes in the standard of care for the targeted indications of the product; and
- availability and amount of coverage and reimbursement from government payors, managed care plans and other third-party payors.

In addition, the potential market opportunities for FOTIVDA and our product candidates are difficult to estimate precisely. Our estimates of the potential market opportunities are predicated on many assumptions, including industry knowledge and publications, third-party research reports and other surveys. While we believe that our internal assumptions are reasonable, these assumptions involve the exercise of significant judgment on the part of our management, are inherently uncertain and the reasonableness of these assumptions has not been assessed by an independent source. If any of the assumptions prove to be inaccurate, the actual markets for our product candidate could be smaller than our estimates of the potential market opportunities.

In addition to our dependence on the success of FOTIVDA, we depend on the success of our clinical stage assets, including tivozanib (in other indications), ficlatuzumab, AV-380 and AV-203. Preclinical studies and clinical trials of our product candidates may not be successful. If we are unable to complete the clinical development of, obtain marketing approval for or successfully commercialize our product candidates, either alone or with a collaborator, or if we experience significant delays in doing so, our business will be materially harmed.

We and any collaborators, including our partners and sublicensees, are not permitted to commercialize, market, promote or sell any product candidate in the United States without obtaining marketing approval from the FDA. Foreign regulatory authorities, such as the European Medicines Agency, or EMA, impose similar requirements. We and our collaborators must complete extensive preclinical development and clinical trials that demonstrate the safety and efficacy of our product candidates in humans before we can obtain these approvals.

We depend heavily on the success of our clinical stage assets and our clinical trials may not be successful. For instance, if the results from the phase 1 clinical trial in AV-380 or any of our clinical trials are unfavorable, this would set us back. Further, we have contracted with a CMO to manufacture the clinical supply for a registrational clinical trial of ficlatuzumab in HNSCC. However, the delivery of the clinical supply of ficlatuzumab originally expected in the first half of 2022 has been delayed significantly due to the shortage of key raw materials and manufacturing supplies also used in COVID-19 vaccine manufacturing, and will require the Company to delay the start date of this registrational clinical trial until 2023, which may impact timing of potential commercialization and associated revenue generation.

Preclinical and clinical testing is expensive, is difficult to design and implement, can take many years to complete and is inherently uncertain as to outcome. We cannot guarantee that any clinical trials will be conducted as planned or completed on schedule, if at all, particularly given that many of our clinical trial sites are research hospitals that have imposed restrictions on entry and other activity as a result of the COVID-19 pandemic. The preclinical and clinical development of our product candidates is susceptible to the risk of failure inherent at any stage of product development. Moreover, we, or any collaborators, may experience any of a number of possible unforeseen adverse events in connection with clinical trials, many of which are beyond our control, including:

- we, or our collaborators, may fail to demonstrate efficacy in a clinical trial or across a broad population of patients;
- the supply or quality of raw materials, manufactured product candidates or other materials necessary to conduct clinical trials of our product candidates may be significantly delayed, insufficient, inadequate or not available at an acceptable cost, or we may experience interruptions in supply;
- it is possible that even if one or more of our product candidates has a beneficial effect, that effect (a) will not be detected during preclinical or clinical evaluation or (b) may indicate an apparent positive effect of a product candidate that is greater than the actual positive effect as a result of one or more of a variety of factors, including the size, duration, design, measurements, conduct or analysis of our clinical trials;
- we may fail to detect toxicity or intolerability of our product candidates, or mistakenly believe that our product candidates are toxic or not well tolerated when that is not in fact the case;
- adverse events or undesirable side effects caused by, or other unexpected properties of, any product candidates that we may develop could cause us, any collaborators, an institutional review board or regulatory authorities to interrupt, delay or halt clinical trials of one or more of our product candidates and could result in a more restrictive label or the delay or denial of marketing approval by the FDA or comparable foreign regulatory authorities;
- if any of our product candidates is associated with adverse events or undesirable side effects or has properties that are unexpected, we, or any collaborators, may need to abandon development or limit development of that product candidate to certain uses or subpopulations in which the undesirable side

effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective;

- regulators or institutional review boards may not authorize us, any collaborators or our or their investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- we, or any collaborators, may have delays in reaching or fail to reach agreement on acceptable clinical trial contracts or clinical trial protocols with prospective trial sites;
- clinical trials of our product candidates may produce unfavorable or inconclusive results, including with respect to the safety, tolerability, efficacy or pharmacodynamic and pharmacokinetic profile of the product candidate;
- we, or any collaborators, may decide, or regulators may require us or them, to conduct additional clinical trials or abandon product development programs;
- the number of patients required for clinical trials of our product candidates may be larger than we, or any collaborators, anticipate, patient enrollment in these clinical trials may be slower than we, or any collaborators, anticipate or participants may drop out of these clinical trials at a higher rate than we, or any collaborators, anticipate;
- our estimates of the patient populations available for study may be higher than actual patient numbers and result in our inability to sufficiently enroll our trials;
- the cost of planned clinical trials of our product candidates may be greater than we anticipate;
- our third-party contractors or those of any collaborators, including those manufacturing our product candidates or components or ingredients thereof or conducting clinical trials on our behalf or on behalf of any collaborators, may fail to comply with regulatory requirements or meet their contractual obligations to us or any collaborators in a timely manner or at all;
- patients that enroll in a clinical trial may misrepresent their eligibility to do so or may otherwise not comply with the clinical trial protocol, resulting in the need to increase the needed enrollment size for the clinical trial, extend the clinical trial's duration, or drop the patients from the final efficacy analysis for the clinical trial, which can negatively affect the statistical power of the results;
- our decision, or a decision by regulators or institutional review boards, that may require us to suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or their standards of conduct, a finding that the participants are being exposed to unacceptable health risks, undesirable side effects or other unexpected characteristics of the product candidate or findings of undesirable effects caused by a chemically or mechanistically similar product or product candidate;
- the FDA or comparable foreign regulatory authorities may disagree with our, or any collaborators', clinical trial designs or our or their interpretation of data from preclinical studies and clinical trials;
- the FDA or comparable foreign regulatory authorities may fail to approve or subsequently find fault with the manufacturing processes or facilities of third-party manufacturers with which we, or any collaborators, enter into agreements for clinical and commercial supplies;
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient to obtain marketing approval; and
- constraints on our, or any collaborators', ability to conduct or complete clinical trials for our product candidates due to the COVID-19 pandemic, including slowdowns in patient enrollment, or necessary supplies, restrictions on patient monitoring at hospital clinical trial sites, closures of third-party facilities, and other disruptions to clinical trial activities.

Product development costs for us and our collaborators will increase if we experience delays in testing or pursuing marketing approvals, and we may be required to obtain additional funds to complete clinical trials and prepare for possible commercialization. We do not know whether any trials will begin as planned, will need to be restructured or will be completed on schedule or at all. Significant clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring products to market before we do, which could impair our ability to successfully commercialize our product candidates and may harm our business and

results of operations. In addition, many of the factors that lead to clinical trial delays may ultimately lead to the denial of marketing approval of any of our product candidates.

If the commercial launch of FOTIVDA for which we recruited a sales force and established marketing, market access and medical affairs teams and distribution capabilities is not successful for any reason, we could incur substantial costs and our investment would be lost if we cannot retain or reassign our sales, marketing, market access and medical affairs personnel.

To achieve commercial success for FOTIVDA, we have expended and anticipate that we will continue to expend significant resources to support our sales force, marketing, market access and medical affairs teams and distribution capabilities. There are risks involved with establishing our own sales, marketing, distribution, training and support capabilities. For example, recruiting and training sales and marketing personnel is expensive and time consuming and could delay our ability to focus on other priorities. If the commercial launch of FOTIVDA is not successful for any reason, this would be costly, and our investment would be lost if we cannot retain or reassign our sales, marketing, market access and medical affairs personnel or terminate on favorable terms any agreements entered into with third parties to support our commercialization efforts.

Factors that may inhibit or limit our efforts to commercialize FOTIVDA on our own include:

- our inability to train and retain adequate numbers of effective sales, marketing, training and support personnel;
- the inability of sales personnel to obtain access to physicians, including key opinion leaders, or to educate an adequate number of physicians of the benefits of FOTIVDA over alternative treatment options;
- limited access to our customers due to the COVID-19 pandemic; and
- unforeseen costs and expenses associated with establishing and maintaining an independent sales, marketing, training and support organization.

If our salesforce, marketing, market access and medical affairs teams and distribution capabilities fail, or are otherwise unsuccessful, it would materially adversely impact the commercial launch of FOTIVDA, impact our ability to generate revenue and harm our business.

If we fail to develop and commercialize other product candidates, we may be unable to grow our business.

Although the continued development of tivozanib and the commercialization of FOTIVDA is our primary focus, as part of our growth strategy, we are developing a pipeline of product candidates. These other product candidates will require additional, time-consuming and costly development efforts, by us or by our collaborators, prior to commercial sale, including preclinical studies, clinical trials and approval by the FDA and/or applicable foreign regulatory authorities. All product candidates are prone to the risks of failure that are inherent in pharmaceutical product development, including the possibility that the product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. In addition, we cannot assure you that any such products that are approved will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace, or will be more effective than other commercially available alternatives.

We may not obtain additional marketing approvals for tivozanib in other indications or initial approval for our other product candidates.

We may not obtain additional marketing approvals for our product candidates. It is possible that the FDA or comparable foreign regulatory agencies may refuse to accept for substantive review any future application that we or a collaborator may submit to market and sell our product candidates, or that any such agency may conclude after review of our or our collaborator's data that such application is insufficient to obtain marketing approval of our product candidate.

If the FDA or other comparable foreign regulatory agency does not accept or approve any future application to market and sell any of our product candidates, such regulators may require that we conduct additional clinical trials, preclinical studies or manufacturing validation studies and submit that data before they will reconsider our application. Depending on the extent of these or any other required trials or studies, approval of any application that we submit may be delayed by several years, or may require us or our collaborator to expend more resources than we or they have available. It

is also possible that additional trials or studies, if performed and completed, may not be considered sufficient by the FDA or other foreign regulatory agency to approve our applications for marketing and commercialization.

Any delay in obtaining, or an inability to obtain, marketing approvals would prevent us or our collaborators from commercializing tivozanib in other indications or our product candidates and generating revenues. If any of these outcomes occur, we would not be eligible for certain milestone and royalty revenue under our partnership agreements, our collaborators could terminate our partnership agreements and we may be forced to abandon our development efforts for our product candidates, any of which could significantly harm our business.

Results of early clinical trials may not be predictive of results of later clinical trials, and interim results of clinical trials may not be predictive of the final results or the success of clinical trials.

The outcome of early clinical trials, such as our DEDUCTIVE trial and our ficlatuzumab trials in HNSCC, pancreatic cancer and AML, may not be predictive of the success of later clinical trials. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials after achieving positive results in earlier development, and we have, and could in the future, face similar setbacks. In addition, interim results and analyses of clinical trials do not necessarily predict the final results or the success of a trial once it is complete.

While the design of a clinical trial may help to establish whether its results will support approval of a product, flaws in the design of a clinical trial may not become apparent until the clinical trial is well advanced. We have limited experience in designing clinical trials and may be unable to design and execute a clinical trial to support marketing approval. In addition, preclinical and clinical data are often susceptible to varying interpretations and analyses. Many companies that believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval for the product candidates. Even if we, or any collaborators, believe that the results of clinical trials for our product candidates warrant marketing approval, the FDA or comparable foreign regulatory authorities may disagree and may not grant marketing approval of our product candidates. For example, in June 2013, we suffered such a setback when the FDA issued a complete response letter, or the 2013 CRL, informing us that it would not approve tivozanib for the first-line treatment of RCC based solely on the data from the TIVO-1 trial, and recommended that we perform an additional clinical trial adequately sized to assure the FDA that tivozanib did not adversely affect overall survival, or OS. We then designed and initiated our TIVO-3 trial to address the FDA's concerns about the negative OS trend expressed in the 2013 CRL, which took time and resources and delayed our efforts to obtain marketing approval for tivozanib in the United States.

If we fail to receive positive results in clinical trials of our product candidates, the development timeline and regulatory approval and commercialization prospects for our most advanced product candidates, and, correspondingly, our business and financial prospects would be negatively impacted.

If we or our collaborators experience delays or difficulties in the enrollment of patients in clinical trials, receipt of necessary regulatory approvals could be delayed or prevented.

We or our collaborators may not be able to initiate or continue clinical trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in clinical trials. Patient enrollment is a significant factor in the timing of clinical trials, and is affected by many factors, including:

- the impact of the COVID-19 pandemic;
- the size and nature of the patient population;
- the severity of the disease under investigation;
- the availability of approved therapeutics for the relevant disease;
- the proximity of patients to clinical sites;
- the design of and eligibility criteria for the trial;
- efforts to facilitate timely enrollment; and
- competing clinical trials.

In addition, participation in our clinical trials will be affected by clinicians' and patients' perceptions as to the potential advantages and risks of the drug being studied and the drug being provided as a control in relation to other

available therapies, including any new drugs that may be approved for the indications we are investigating. For example, at the request of the FDA, we have updated the forms used to obtain consent from patients in ongoing and future trials with tivozanib to include information about the OS results from the TIVO-3 trial as well as the other tivozanib clinical trial OS results to date. These results may impact the interest of clinicians and patients in participating in future clinical trials with tivozanib.

Our inability to enroll a sufficient number of patients for our clinical trials could result in significant delays or may require us to abandon one or more clinical trials altogether. Enrollment delays in our clinical trials may result in increased development costs for our product candidates, delay or halt the development of and approval processes for our product candidates and jeopardize our ability to commence sales of and generate revenues from our product candidates, which could cause the value of our company to decline and limit our ability to obtain additional financing, if needed.

We are conducting, and intend in the future to conduct, clinical trials for certain of our product candidates at sites outside the United States. The FDA may not accept data from trials conducted in such locations and the conduct of trials outside the United States could subject us to additional delays and expense.

We are conducting, and intend in the future to conduct, one or more of our clinical trials with trial sites that are located outside the United States. Although the FDA may accept data from clinical trials conducted outside the United States, acceptance of these data is subject to certain conditions imposed by the FDA. For example, the clinical trial must be well designed and conducted and performed by qualified investigators in accordance with good clinical practice. The FDA must be able to validate the data from the trial through an onsite inspection if necessary. The trial population must also have a similar profile to the U.S. population, and the data must be applicable to the U.S. population and U.S. medical practice in ways that the FDA deems clinically meaningful, except to the extent the disease being studied does not typically occur in the United States. In addition, while these clinical trials are subject to the applicable local laws, the FDA acceptance of the data will be dependent upon its determination that the trials also complied with all applicable U.S. laws and regulations. There can be no assurance that the FDA will accept data from trials conducted outside of the United States. If the FDA does not accept the data from any trial that we conduct outside the United States, it would likely result in the need for additional trials, which would be costly and time-consuming and delay or permanently halt our development of our product candidates.

In addition, the conduct of clinical trials outside the United States could have a significant adverse impact on us or the trial results. Risks inherent in conducting international clinical trials include:

- clinical practice patterns and standards of care that vary widely among countries;
- non-U.S. regulatory authority requirements that could restrict or limit our ability to conduct our clinical trials;
- administrative burdens of conducting clinical trials under multiple non-U.S. regulatory authority schema;
- foreign exchange rate fluctuations; and
- diminished protection of intellectual property in some countries.

Even if a product candidate receives marketing approval, we or others may later discover that the product is less effective than previously believed or causes undesirable side effects that were not previously identified, which could compromise our ability or that of any collaborators to market the product, and could cause regulatory authorities to take certain regulatory actions.

It is possible that our clinical trials may indicate an apparent positive effect of a product candidate that is greater than the actual positive effect, if any, or alternatively fail to identify undesirable side effects. For example, despite the recent FDA marketing approval of FOTIVDA in the United States, we, or others, may discover that FOTIVDA is less effective or tolerable than previously believed. If, we, or others, discover that a product is less effective than previously believed or causes undesirable side effects that were not previously identified, any of the following adverse events could occur:

- regulatory authorities may withdraw their approval of the product or seize the product;
- we, or any of our collaborators, may be required to recall the product, change the way the product is administered or conduct additional clinical trials;

- additional restrictions may be imposed on the marketing of, or the manufacturing processes for, the particular product;
- we, or any of our collaborators, may be subject to fines, injunctions or the imposition of civil or criminal penalties;
- regulatory authorities may require the addition of labeling statements, such as a “black box” warning or a contraindication;
- we, or any of our collaborators, may be required to create a Medication Guide outlining the risks of the previously unidentified side effects for distribution to patients;
- we could be sued and held liable for harm caused to patients;
- physicians and patients may stop using our product; and
- our reputation may suffer.

Any of these events could harm our business and operations and could negatively impact our stock price.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we intend to focus on developing product candidates for specific indications that we identify as most likely to succeed, in terms of their potential for marketing approval and commercialization, as well as those that are most aligned with our strategic goals. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that may prove to have greater commercial potential.

Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable product candidates. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to the product candidate.

We face substantial competition from existing approved products. Our competitors may also discover, develop or commercialize new competing products before, or more successfully, than we do.

The biotechnology and pharmaceutical industries are highly competitive, and our future success depends on our ability to demonstrate and maintain a competitive advantage with respect to the design, development and commercialization of product candidates. Our core competitors include pharmaceutical and biotech organizations, as well as academic research institutions, clinical research laboratories and government agencies that are focusing on the research and development of small molecules and antibodies for cancer treatment. Many of our competitors have greater financial, technical and human resources than we do. Established competitors may invest heavily to discover and develop novel compounds that could make our product candidates obsolete.

For instance, there are several therapies in clinical development for RCC, HCC and HNSCC that may alter the competitive landscape for the treatment of these cancers. As such, it is difficult to predict how these changes will inform our perspective on the key competitors for our products in RCC, HCC and HNSCC in the future. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to obtain approval, to overcome price competition and to be commercially successful.

Mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in favor of our competitors. Additionally, many competitors have greater experience in product discovery and development, obtaining FDA and other regulatory approvals and commercialization capabilities, which may provide them with a competitive advantage. If we are not able to compete effectively, our business will not grow and our financial condition and operations will suffer.

We believe that our ability to compete will depend on our ability to execute on the following objectives:

- design studies, execute on development plans and commercialize products that are competitive to other products in the market in terms of, among other things, safety, efficacy, convenience or price;
- obtain and maintain patent and/or other proprietary protection for our processes and product candidates;
- obtain required regulatory approvals;
- obtain favorable reimbursement, formulary and guideline status;
- collaborate with others in the design, development and commercialization of our products; and
- evaluate and pursue strategic business development and partnership opportunities for our programs.

FOTIVDA, or any other product candidate that we or our collaborators are able to commercialize, may become subject to unfavorable pricing regulations, third-party payor reimbursement practices or healthcare reform initiatives, any of which could harm our business.

The commercial success of our product candidates will depend substantially, both domestically and abroad, on the extent to which the costs of our product candidates will be paid by third-party payors, including government health care programs and private health insurers. For example, our European licensee for FOTIVDA, EUSA, is working to secure reimbursement approval for and commercially launch FOTIVDA in many of the countries in which FOTIVDA has been approved. However, there is significant competition in the first-line RCC setting in the EU due to the approval of several immunotherapy combinations which have become a standard of care and impacted the market opportunity for monotherapy treatments. If EUSA is unable to secure reimbursement approval, or reimbursement is limited, and if EUSA is unable to commercially launch FOTIVDA in additional countries and does not seek to expand the label for FOTIVDA to the relapsed or refractory RCC setting, it may materially impact our ability to generate revenue from sales of FOTIVDA outside the United States. Even if coverage is provided, the approved reimbursement amount may not be high enough to allow us or our collaborators to establish or maintain pricing sufficient to realize a sufficient return on our investments. In the United States, no uniform policy of coverage and reimbursement for products exists among third-party payors, and coverage and reimbursement levels for products can differ significantly from payor to payor. As a result, the coverage determination process is often time consuming and costly and may require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage and adequate reimbursement will be obtained or applied consistently.

There is significant uncertainty related to third-party payor coverage and reimbursement of newly approved drugs. Marketing approvals, pricing and reimbursement for new drug products vary widely from country to country. Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we or our collaborators might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay commercial launch of the product, possibly for lengthy time periods, which may negatively impact the revenues we are able to generate from the sale of the product in that country. Adverse pricing limitations may hinder our ability to recoup our or their investment in one or more product candidates, even if our product candidates obtain marketing approval.

Patients who are provided medical treatment for their conditions generally rely on third-party payors to reimburse all or part of the costs associated with their treatment. Therefore, our ability, and the ability of any collaborators, to successfully commercialize any of our product candidates will depend in part on the extent to which coverage and adequate reimbursement for these products and related treatments will be available from third-party payors. Third-party payors decide which medications they will cover and establish reimbursement levels. The healthcare industry is acutely focused on cost containment, both in the United States and elsewhere. Government authorities and other third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications, which could affect our ability to sell our product candidates profitably. These payors may not view our products, even if approved, as cost-effective, and coverage and reimbursement may not be available to our customers or may not be sufficient to allow our products to be marketed on a competitive basis. Cost-control initiatives could cause us or our collaborators to decrease the price we might establish for products, which could result in lower than anticipated product revenues. If the prices for our products, if any, decrease or if governmental and other third-party payors do not provide coverage or adequate reimbursement, our prospects for revenue and profitability will suffer.

There may also be delays in obtaining coverage and reimbursement for newly approved drugs, such as FOTIVDA, and coverage may be more limited for FOTIVDA than the indication for which the drug is approved by the FDA or comparable foreign regulatory authorities. Moreover, eligibility for reimbursement does not imply that any drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale and distribution. Reimbursement rates may vary, for example, according to the use of the product and the clinical setting in which it is used. Reimbursement rates may also be based on reimbursement levels already set for lower cost drugs or may be incorporated into existing payments for other services.

In addition, increasingly, third-party payors are requiring higher levels of evidence of the benefits and clinical outcomes of new technologies and are challenging the prices charged. We cannot be sure that coverage will be available for any product candidate that we, or third-parties, commercialize and, if available, that the reimbursement rates will be adequate. Further, the net reimbursement for drug products may be subject to additional reductions if there are changes to laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. An inability to promptly obtain coverage and adequate payment rates from both government-funded and private payors for any of our product candidates for which we obtain regulatory approval could significantly harm our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

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 a risk of product liability as a result of the commercialization of FOTIVDA and the clinical testing of our product candidates. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit the development or commercialization of our product candidates. Even a successful defense could require significant financial and management resources. Regardless of the merits or eventual outcome, product liability claims may result in:

- decreased commercial demand for FOTIVDA, resulting in loss of revenue;
- delay or termination of our clinical trials, or the withdrawal of clinical trial participants;
- significant costs to defend the related litigation;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- the inability to develop or commercialize our product candidates;
- injury to our reputation and negative media attention; and
- a decline in our stock price.

Although we maintain general liability insurance and clinical trial liability insurance, this insurance may not fully cover potential liabilities that we may incur. The cost of any product liability litigation or other proceeding, even if resolved in our favor, could be substantial. Insurance coverage is becoming increasingly expensive. We increased our insurance coverage for the commercialization of FOTIVDA and we will need to increase our insurance coverage further if we commercialize any of our other products that receive marketing approval. If we are unable to maintain sufficient insurance coverage at an acceptable cost or to otherwise protect against potential product liability claims, it could prevent or inhibit the development and commercial production and sale of our product candidates, which could harm our business, financial condition, results of operations and prospects.

Our internal computer systems or other company technology to collect and store information, or those of any third parties with which we contract, may fail or suffer security breaches, which could result in a material disruption of our product development programs.

Despite the implementation of security measures, our internal computer systems and those of third parties with which we contract are vulnerable to damage from computer viruses, worms and other destructive or disruptive software, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such systems are also vulnerable to service interruptions or to security breaches from inadvertent or intentional actions by our employees, third-party vendors and/or business partners, or from cyber incidents by malicious third parties. Sensitive commercial and personal information also may be subject to security breaches in other contexts, related to personal devices or other technology or systems where this information can be collected, stored and used. Cyber incidents are increasing in their

frequency, sophistication and intensity, and have become increasingly difficult to detect. Cyber incidents could include the deployment of harmful malware, ransomware, denial-of-service attacks, unauthorized access to or deletion of files, social engineering and other means to affect service reliability and threaten the confidentiality, integrity and availability of information. Cyber incidents also could include phishing attempts or e-mail fraud to cause payments or information to be transmitted to an unintended recipient. We could be subject to risks caused by misappropriation, misuse, leakage, falsification or intentional or accidental release or loss of information maintained in the information systems and networks of our company, including personal information of our employees. In addition, we face other kinds of risks related to our commercial and personal information, including lost or stolen devices or other systems (including paper records) that collect and store our personal and commercial information.

System failures, accidents, cyber incidents or security breaches could cause interruptions in our operations, and could result in a material disruption of our clinical and commercialization activities and business operations, whether due to a loss of our trade secrets or other proprietary information or other similar disruptions, in addition to possibly requiring substantial expenditures of resources to remedy. For example, the loss of clinical trial data from completed or future 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 were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability, our competitive position could be harmed and our product research, development and commercialization efforts could be delayed. We may in certain instances be required to provide notification to individuals or others in connection with the loss of their personal or commercial information. In addition, we may not have adequate insurance coverage to provide compensation for any losses associated with such events.

If a material breach of our security or that of our vendors occurs, the market perception of the effectiveness of our security measures could be harmed, we could lose business and our reputation and credibility could be damaged. We could be required to expend significant amounts of money and other resources to repair or replace information systems or networks. Although we develop and maintain systems and controls designed to prevent these events from occurring, and we have a process to identify and mitigate threats, the development and maintenance of these systems, controls and processes is costly and requires ongoing monitoring and updating as technologies change and efforts to overcome security measures become more sophisticated. Moreover, despite our efforts, the possibility of these events occurring cannot be eliminated entirely.

A Fast Track designation by the FDA, even though granted for ficlatuzumab and cetuximab may not lead to a faster development or regulatory review or approval process, and does not increase the likelihood that ficlatuzumab will receive marketing approval.

If a drug or biologic is intended for the treatment of a serious or life-threatening condition and the product candidate demonstrates the potential to address unmet medical needs for this condition, the product sponsor may apply for FDA Fast Track designation for a particular indication. We have been granted Fast Track designation for the investigation of ficlatuzumab and cetuximab for the treatment of patients with relapsed or recurrent HNSCC. Marketing applications filed by sponsors of product candidates in Fast Track development may qualify for priority review under the policies and procedures offered by the FDA, but the Fast Track designation does not assure any such qualification or ultimate marketing approval by the FDA. Even though we have received Fast Track designation for ficlatuzumab and cetuximab, we may not experience a faster development process, review or approval compared to conventional FDA procedures, and receiving a Fast Track designation does not provide assurance of ultimate FDA approval. In addition, the FDA may withdraw Fast Track designation if it believes that the designation is no longer supported by data from our clinical development program. Further, the FDA may withdraw Fast Track designation at any time.

Risks Related to the COVID-19 Pandemic

The COVID-19 pandemic has adversely disrupted, and is expected to continue to adversely disrupt our operations, including our ability to commercialize FOTIVDA by restricting in-person access to treating oncologists and restricting in-person access to certain institutions, our ability to manufacture clinical product and our ability to initiate new trials or complete ongoing clinical trials and may have other adverse effects on our business, operations and ability to raise capital.

The COVID-19 pandemic, which began in December 2019 and has spread worldwide, has caused many governments to implement measures to slow the spread of the outbreak through quarantines, strict travel restrictions, heightened border scrutiny and other measures. The outbreak and government measures taken in response have also had a significant impact, both direct and indirect, on businesses and commerce, as worker shortages have occurred, supply chains

have been disrupted, facilities and production have been suspended, and demand for certain goods and services, such as manufacturing materials, medical services and supplies, has spiked, while demand for other goods and services, such as travel, has fallen. The future progression of the pandemic and its effects on our business and operations are uncertain.

The COVID-19 pandemic has resulted in restricted access to many hospitals, doctors' offices and other healthcare institutions. Further, it has limited the ability to meet with people in-person in other public settings. As a result, our sales force has been limited in its ability to access customers, prescribers and healthcare professionals in traditional in-person settings which has adversely impacted their ability to educate and reach customers, prescribers and healthcare professionals and may adversely impact our ability to successfully commercialize FOTIVDA.

We have enrolled and seek to enroll cancer patients in our ongoing clinical trials at sites located both in the United States and in the EU. The COVID-19 pandemic has delayed and may continue to delay or otherwise adversely affect these clinical development activities, including our ability to recruit and retain patients in our ongoing clinical trials, as a result of many factors, including:

- diversion of healthcare resources away from the conduct of our clinical trials in order to focus on pandemic concerns, including the availability of necessary materials, including manufacturing supplies, the attention of physicians serving as our clinical trial investigators, access to hospitals serving as our clinical trial sites, availability of hospital staff supporting the conduct of our clinical trials and the reluctance of patients enrolled in our clinical trials to visit clinical trial sites;
- potential interruptions in global shipping affecting the transport of clinical trial materials, such as investigational drug product, patient samples and other supplies used in our clinical trials;
- the impact of further limitations on travel that could interrupt key clinical trial activities, such as clinical trial site initiations and monitoring activities, travel by our employees, contractors or patients to clinical trial sites or the ability of employees at any of our CMO or CROs to report to work, any of which could delay or adversely impact the conduct or progress of our clinical trials, and limit the amount of clinical data we will be able to report;
- any future interruption of, or delays in receiving, supplies of clinical trial material from our contract manufacturing organizations or, in the case of combination trials, our study collaborators, due to staffing shortages, production slowdowns or stoppages or disruptions in delivery systems; and
- availability of future capacity at CMOs to produce sufficient drug substance and drug product to meet forecasted clinical trial demand if any of these manufacturers elect or are required to divert attention or resources to the manufacture of other pharmaceutical products.

For example, some of the clinical trial sites for our DEDUCTIVE trial have suspended enrollment at times due to COVID-19 related hospital and governmental restrictions. Enrollment has occurred at a slower pace than initially forecasted prior to the onset of the pandemic, and we cannot guarantee the future pace of enrollment. In addition, in-person monitoring visits are currently on hold at certain of the clinical trial sites in our DEDUCTIVE trial and to the extent possible, due to the COVID-19 pandemic, monitoring is being conducted remotely. We do not yet know whether remote management of this function will prove to be sufficient. The extent of any adverse impact on our clinical trials will depend on numerous evolving factors that cannot be predicted with any level of certainty. In addition, in March 2020 we decided to discontinue the CyFi-2 trial due to the urgent shift in priorities among clinical trial sites toward efforts to combat the COVID-19 pandemic, which had impacted the trial enrollment timeline and the feasibility of completing the study within the shelf-life of the ficlatuzumab clinical trial supply.

Any negative impact that the COVID-19 pandemic has on the ability of our suppliers to provide materials for our product candidates could cause additional delays with respect to product development activities, which could materially and adversely affect our ability to initiate or complete clinical trials, obtain regulatory approval for and to commercialize our product candidates, increase our operating expenses, affect our ability to raise additional capital and have a material adverse effect on our financial results. For example, the delivery of the clinical supply of ficlatuzumab originally expected in the first half of 2022 has been delayed due to the shortage of key raw materials and manufacturing supplies also used in COVID-19 vaccine manufacturing and will require the Company to delay the start date of this potential registrational clinical trial until the first half of 2023, which, if approved, may impact timing of potential commercialization and associated revenue generation.

The COVID-19 pandemic continues to evolve and its ultimate scope, duration and effects are unknown. The extent of the impact of the disruptions to our business, the supply chain, preclinical studies, clinical trials and commercialization efforts as a result of the outbreak will depend on future developments, which are highly uncertain and

cannot be predicted with confidence. The macroeconomic impacts arising from the duration of the COVID-19 pandemic, including supply chain disruptions, may have prolonged and unforeseen adverse impacts to our industry, business and operations. In addition, this pandemic has adversely impacted economies worldwide and may cause additional disruption in the financial markets, both of which could result in adverse effects on our business, operations and ability to raise capital.

Risks Related to Our Dependence on Third Parties

We rely on third parties, such as CROs, to conduct clinical trials for our product candidates, and if they do not properly and successfully perform their obligations to us, we may not be able to obtain regulatory approvals for our product candidates.

We, in consultation with our collaborators, where applicable, design the clinical trials for our product candidates, but we rely on CROs and other third parties to perform many of the functions in managing, monitoring and otherwise carrying out many of these trials. We compete with larger companies for the resources of these third parties. In addition, these third parties may be adversely affected by the COVID-19 pandemic.

Although we plan to continue to rely on these third parties to conduct our ongoing and any future clinical trials, we are responsible for ensuring that each of our clinical trials is conducted in accordance with its general investigational plan and protocol. Moreover, the FDA and foreign regulatory agencies require us to comply with regulations and standards, including good clinical practices, for designing, conducting, monitoring, recording, analyzing and reporting the results of clinical trials to assure that the data and results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Our reliance on third parties that we do not control does not relieve us of these responsibilities and requirements. The third parties on whom we rely generally may terminate their engagements with us at any time. If we are required to enter into alternative arrangements because of any such termination, the introduction of our product candidates to market could be delayed.

If these third parties do not successfully carry out their duties under their agreements with us, if the quality or accuracy of the data they obtain, process and analyze is compromised for any reason or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, our clinical trials may experience delays or may fail to meet regulatory requirements. If our clinical trials do not meet regulatory requirements or if these third parties need to be replaced, our preclinical development activities or clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidates and our reputation could be harmed.

We rely on third-party manufacturers and third-party suppliers to produce, supply, store and transport our preclinical and clinical product candidate supplies, and we rely on third-parties to produce, store and distribute commercial supplies of FOTIVDA. Any failure by a third-party manufacturer or a third-party supplier to timely produce or provide required manufacturing supplies for us or to safely store product candidate supplies and commercial supplies of FOTIVDA may delay or impair our ability to manufacture product, initiate or complete our clinical trials or commercialize our product candidates.

We have relied upon third-party manufacturers for the manufacture of our product candidates for preclinical and clinical testing purposes and intend to continue to do so in the future. If we are unable to arrange for third-party manufacturing sources, or to do so on commercially reasonable terms, we may not be able to complete development of such product candidates or to market them.

Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured product candidates ourselves, including reliance on the third-party for regulatory compliance, quality assurance and safe-keeping of our product candidate supplies, the possibility of breach of the manufacturing agreement by the third-party because of factors beyond our control, failure of the third-party to accept orders for supply of drug substance or drug product and the possibility of termination or nonrenewal of the agreement by the third-party, based on its own business priorities, at a time that is costly or damaging to us. In addition, the FDA and other regulatory authorities require that our product candidates be manufactured according to current good manufacturing practices, or cGMPs. Any failure by our third-party manufacturers to comply with cGMPs or failure to scale-up manufacturing processes as needed, including any failure to safely transport and deliver sufficient quantities of product candidates in a timely manner, could lead to a delay in, or failure to obtain, regulatory approval of any of our product candidates. In addition, such failure could be the basis for action by the FDA to withdraw approvals for product candidates previously granted to us and for other regulatory action, including recall or seizure, fines, imposition of operating restrictions, total or partial suspension of production or injunctions.

We rely on our manufacturers to purchase from third-party suppliers the materials necessary to produce our product candidates for our clinical studies and commercial manufacturing. There are a small number of suppliers of raw and starting materials that we use to manufacture our product candidates, many of whom have experienced delays and challenges related to the COVID-19 pandemic. Such suppliers may not be able to provide these materials to our manufacturers at the times we need them or on commercially reasonable terms. We do not have any control over the process or timing of the acquisition of these materials by our manufacturers and delays related to the COVID-19 pandemic to provide raw and starting materials that we use to manufacture our product candidates could delay or disrupt our ability to initiate or continue clinical trials on our scheduled timelines or at all.

Any significant delay in the supply of a product candidate or the raw material components thereof for a scheduled or ongoing clinical trial due to the COVID-19 pandemic, the need to replace a third-party supplier or other factors could considerably delay completion of our clinical studies, product testing and potential regulatory approval of our product candidates.

Because of the complex nature of many of our early stage compounds and product candidates, our manufacturers may not be able to manufacture such compounds and product candidates at a cost or quantity or in the timeframe necessary to develop and commercialize the related products. As our product development pipeline matures, we will have a greater need for commercial manufacturing capacity and we may be required to establish or access large-scale commercial manufacturing capabilities. In addition, we do not own or operate manufacturing facilities for the production of clinical or commercial quantities of our product candidates and we currently have no plans to build our own clinical or commercial scale manufacturing capabilities. To meet our projected needs for commercial manufacturing, third parties with whom we currently work may need to increase their scale of production or we may need to secure alternate suppliers.

We rely on third parties to securely store product candidate supplies and commercial supplies of FOTIVDA. While we have sought to protect our product candidate supplies and commercial supplies of FOTIVDA through diversification of storage locations, there are times when such supplies may be placed in jeopardy due to unforeseen circumstances such as the disruption to the supply chain caused by the COVID-19 pandemic. If our product candidate supplies or commercial supplies of FOTIVDA were lost, destroyed, significantly delayed or otherwise compromised, it would delay or impair our ability to complete clinical trials and commercialize FOTIVDA.

We rely on our licensee EUSA, over whom we have little control, for the sales, marketing and distribution efforts associated with the commercialization of FOTIVDA in certain countries in the EUSA territory and any failure by EUSA to devote the necessary resources and attention to market and sell FOTIVDA effectively and successfully may materially impact our ability to generate revenue.

In December 2015, we entered into the EUSA Agreement, under which we granted to EUSA the exclusive, sublicensable right to develop, manufacture and commercialize FOTIVDA in the territories of Europe (excluding Russia, Ukraine and the Commonwealth of Independent States), Latin America (excluding Mexico), Africa and Australasia for all diseases and conditions in humans, excluding non-oncologic diseases or conditions of the eye. We have limited contractual rights to force EUSA to invest significantly in the commercialization of FOTIVDA in jurisdictions covered by the EUSA Agreement. For instance, under the EUSA Agreement, EUSA is not required to opt into the data from the TIVO-3 trial to seek to expand the label for FOTIVDA to the relapsed or refractory RCC setting and, to date, has not chosen to do so. In the event that EUSA fails to adequately commercialize tivozanib because it lacks adequate financial or other resources, decides to focus on other initiatives or otherwise, our ability to successfully commercialize tivozanib in the applicable jurisdictions would be limited, which would adversely affect our business, financial condition, results of operations and prospects.

In addition, the EUSA Agreement may be terminated by either party upon prior written notice. If EUSA terminated the EUSA Agreement, we may not be able to secure an alternative distributor in the applicable territories on a timely basis or at all, in which case our ability to generate revenues from the sale of tivozanib, outside the United States would be materially harmed.

Further, while EUSA is working to secure reimbursement approval in and commercially launch FOTIVDA in additional countries in the EUSA territory, there is significant competition in the first-line RCC setting in the EU due to the approval of several immunotherapy combinations which have become a standard of care and impacted the market opportunity for monotherapy treatments. If EUSA is unable to secure reimbursement approval in and commercially launch FOTIVDA in additional countries in the EUSA territory and does not seek to expand the label for FOTIVDA to the

relapsed or refractory RCC setting, it may materially impact our ability to generate revenue from sales of FOTIVDA outside the United States.

We may not be successful in establishing or maintaining strategic partnerships to further the development of our therapeutic programs. Additionally, if any of our current or future strategic partners fails to perform its obligations or terminates the partnership, the development and commercialization of the product candidates under such agreement could be delayed or terminated. Such failures could have a material adverse effect on our operations and business.

Our success will depend in significant part on our ability to attract and maintain strategic partners and strategic relationships with other biotechnology or pharmaceutical companies to support the development and commercialization of our product candidates. In these partnerships, we would expect our strategic partner to provide capabilities in research, development, regulatory filings, marketing and sales, in addition to funding.

We face significant competition in seeking appropriate strategic partners, and the negotiation process is time-consuming and complex. Moreover, we may not be successful in our efforts to establish a strategic partnership or other alternative arrangements for any product candidates and programs because our product candidates may be deemed to be at too early of a stage of development for collaborative effort or third parties may not view our product candidates as having the requisite potential.

If we are not able to establish and maintain strategic partnerships:

- the development of certain of our product candidates may be delayed or terminated;
- the internal cash expenditures needed to develop such product candidates would increase significantly, and we may not have the cash resources to develop such product candidates on our own; and
- we may have fewer resources with which to continue to operate our business.

Even if we are successful in our efforts to establish new strategic partnerships, the terms that we agree upon may not be favorable to us. If any strategic partner were to breach or terminate its arrangements with us, the development and commercialization of the affected product candidate could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue development and commercialization of the product candidate on our own. If any current or future strategic partners do not devote sufficient time and resources to their arrangements with us, we may not realize the potential commercial benefits of the arrangement, and our results of operations may be adversely affected. For example, in March 2020, CANbridge advised us that it was evaluating alternative development plans for AV-203, which would delay the initiation of clinical trials of AV-203. Then, in March 2021, CANbridge exercised its right to terminate the CANbridge Agreement for convenience. Under the terms of the CANbridge Agreement, the transfer of the AV-203 program occurred in September 2021, which has delayed the initiation of clinical trials of AV-203 even further.

Our current partners and licensees can terminate their agreements with us under various conditions, including without cause, at which point they would no longer continue to develop our products. For example, in September 2020 Biodesix exercised its Opt-Out right under the Biodesix Agreement. As a result, Biodesix is not required to contribute to the future development costs of ficlatuzumab in exchange for a reduced economic interest in any future ficlatuzumab revenues.

Much of the potential revenue from any of our strategic partnerships will likely consist of contingent payments, such as development milestones and royalties payable on sales of any successfully developed drugs. Any such contingent revenue will depend upon our, and our strategic partners', ability to successfully develop, introduce, market and sell new drugs. In some cases, we are not involved in these processes, and we depend entirely on our strategic partners. Any of our strategic partners may fail to develop or effectively commercialize these drugs because it:

- decides not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite scientific expertise, limited cash resources or specialized equipment limitations, or the belief that other product candidates may have a higher likelihood of obtaining regulatory approval or may potentially generate a greater return on investment;
- does not have sufficient resources necessary to carry the product candidate through clinical development, regulatory approval and commercialization; or
- cannot obtain the necessary regulatory approvals.

If one or more of our strategic partners fails to develop or effectively commercialize product candidates for any reason, we may not be able to replace the strategic partner with another partner to develop and commercialize a product candidate under the terms of the strategic partnership. We may also be unable to obtain, on terms acceptable to us, a license from such strategic partner to any of its intellectual property that may be necessary or useful for us to continue to develop and commercialize a product candidate. Any of these events could have a material adverse effect on our business, results of operations and our ability to achieve future profitability and could cause our stock price to decline.

Risks Related to Our Intellectual Property Rights

We could be unsuccessful in obtaining or maintaining adequate patent protection for one or more of our product candidates, or the scope of our patent protection could be insufficiently broad, which could result in competition and a decrease in the potential market share for our product candidates.

We cannot be certain that patents will be issued or granted with respect to applications that are currently pending, or that issued or granted patents will not later be found to be invalid and/or unenforceable. The patent position of biotechnology and pharmaceutical companies is generally uncertain because it involves complex legal and factual considerations. The standards applied by the United States Patent and Trademark Office, or USPTO, and foreign patent offices in granting patents are not always applied uniformly or predictably. For example, there is no uniform worldwide policy regarding patentable subject matter or the scope of claims allowable in biotechnology and pharmaceutical patents. Consequently, patents may not issue from our pending patent applications. As such, we do not know the degree of future protection that we will have on our proprietary products and technology. For example, we have filed a patent application directed to our clinical protocol for using tivozanib to treat refractory cancers, including, following therapy with checkpoint inhibitors. It is possible that we may not successfully obtain a granted patent based upon this patent application. The scope of patent protection that the USPTO will grant with respect to the antibodies in our antibody product pipeline is also uncertain. It is possible that the USPTO will not allow broad antibody claims that cover closely related antibodies as well as the specific antibody. Upon receipt of FDA approval, competitors would be free to market antibodies almost identical to ours, including biosimilar antibodies, thereby decreasing our market share.

If we do not obtain patent term extensions under the Hatch-Waxman Act and similar non-U.S. legislation to extend the term of patents covering each of our product candidates, our business may be materially harmed.

Patents have a limited duration. The term of a U.S. patent, if granted from an application filed on or after June 8, 1995, is generally 20 years from its earliest U.S. non-provisional filing date. Even if patents covering our product candidates are obtained, once the patents expire, we may be open to competition from competitive medications. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. As a result, our owned or in-licensed patent rights may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Depending upon the circumstances, the term of our owned and in-licensed patent rights that cover our product candidates may be extended in the United States under the Hatch-Waxman Act, by Supplementary Protection Certificates, or SPCs, in certain countries, and by similar legislation in other countries, for delays incurred when seeking marketing approval for a drug candidate. For example, the Hatch-Waxman Act permits a patent term extension of up to five years for a patent covering an approved product as compensation for effective patent term lost during product development and the FDA regulatory review process. However, we may not receive an extension if we fail to apply within the applicable deadline, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Moreover, the length of the extension could be less than we request. If we are unable to obtain a patent term extension or the term of any such extension is less than we request, the period during which we can enforce our patent rights for that product will be shortened and our competitors may obtain approval to market competing products sooner. As a result, our revenue from applicable products could be materially reduced. For example, we have exclusive license rights to a first U.S. patent covering the tivozanib molecule and its therapeutic use, which is scheduled to expire in 2022, and a second U.S. patent covering the crystalline form of tivozanib, which is scheduled to expire in 2023. In view of the length of time tivozanib had been under regulatory review at the FDA, a patent term extension of up to five years may be available. Although we have applied for patent term extensions on each U.S. patent, only one patent may be extended, and, when appropriate, we will have to elect which patent is to be extended. If a five-year extension were to be granted, if applied to the first patent, the term could be extended to April of 2027, and if applied to the second patent, the term could be extended to November of 2028. However, the length of the extension could be less than we request, or no extension may be granted at all.

In addition, SPCs have been granted for the patent covering the tivozanib molecule in Belgium, Finland, France, Germany, Italy, the Netherlands, Norway, Poland, Portugal, Spain and Sweden, extending the term of the patents in each of these countries up to April 2027. An SPC has been granted for the patent covering the crystalline form of tivozanib in Ireland extending the term of that patent to October 2028. The remaining pending applications for SPCs on the patent covering the tivozanib molecule in Denmark and Great Britain may not be similarly granted, or may be granted for a shorter period than requested. If we are unable to obtain a patent term extension or the term of any such extension is less than we request, the period of time during which the patent rights covering tivozanib or its use can be enforced will be shortened, and our competitors may obtain approval to market a competing product sooner. As a result, our potential revenue from tivozanib could be materially reduced, causing material harm to our business.

Issued patents covering one or more of our products could be found invalid or unenforceable if challenged in patent office proceedings, or in court.

If we or one of our strategic partners were to initiate legal proceedings against a third-party to enforce a patent covering one of our products, the defendant could counterclaim that our patent is invalid and/or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. In addition, with respect to FOTIVDA, generic manufacturers could challenge the patents covering FOTIVDA as part of the process of obtaining regulatory approval via an abbreviated new drug application, or ANDA. Grounds for a validity challenge could be an alleged failure to meet one or more statutory requirements for patentability, including, for example, lack of novelty, obviousness, lack of written description or non-enablement. In addition, patent validity challenges may, under certain circumstances, be based upon non-statutory obviousness-type double patenting, which, if successful, could result in a finding that the claims are invalid for obviousness-type double patenting or the loss of patent term, including a patent term adjustment granted by the USPTO, if a terminal disclaimer is filed to obviate a finding of obviousness-type double patenting. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. Additionally, third parties are able to challenge the validity of issued patents through administrative proceedings in the patent offices of certain countries, including the USPTO and the European Patent Office. Although we have conducted due diligence on patents we have exclusively in-licensed, and we believe that we have conducted our patent prosecution in accordance with the duty of candor and in good faith, the outcome following legal assertions of invalidity and unenforceability during patent litigation is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on one of our products. Such a loss of patent protection could have a material adverse impact on our business. Further, an intellectual property litigation could lead to unfavorable publicity that could harm our reputation and cause the market price of our common stock to decline.

Claims that our platform technologies, our products or the sale or use of our products infringe the patent rights of third parties could result in costly litigation or could require substantial time and money to resolve, even if litigation is avoided.

We cannot guarantee that our platform technologies, our products or the use of our products, do not infringe third-party patents. Third parties might allege that we are infringing their patent rights or that we have misappropriated their trade secrets. Such third parties might resort to litigation against us. The basis of such litigation could be existing patents or patents that issue in the future.

It is also possible that we failed to identify relevant third-party patents or applications. For example, applications filed before November 29, 2000, and certain applications filed after that date that will not be filed outside the United States remain confidential until patents issue. Patent applications in the United States and elsewhere are published approximately 18 months after the earliest filing, which is referred to as the priority date. Therefore, patent applications covering our products or platform technology could have been filed by others without our knowledge. Additionally, pending patent applications which have been published can, subject to certain limitations, be later amended in a manner that could cover our platform technologies, our products or the use of our products.

With regard to ficlatuzumab, we are aware of one United States patent and its foreign counterparts that contain broad claims related to anti-HGF antibodies having certain binding properties and their use. In the event that the owner of these patents were to bring an infringement action against us, we may have to argue that our product, its manufacture or use does not infringe a valid claim of the patent in question. Furthermore, if we were to challenge the validity of any issued United States patent in court, we would need to overcome a statutory presumption of validity that attaches to every United

States patent. This means that, in order to prevail, we would have to present clear and convincing evidence as to the invalidity of the patent's claims. There is no assurance that a court would find in our favor on questions of infringement or validity.

In order to avoid or settle potential claims with respect to any of the patent rights described above or any other patent rights of third parties, we may choose or be required to seek a license from a third-party and be required to pay license fees or royalties or both. These licenses may not be available on commercially acceptable terms, or at all. Even if we or our strategic partners were able to obtain a license, the rights may be non-exclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or be forced to cease some aspect of our business operations, if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms. This could harm our business significantly.

Defending against claims of patent infringement or misappropriation of trade secrets could be costly and time-consuming, regardless of the outcome. Thus, even if we were to ultimately prevail, or to settle at an early stage, such litigation could burden us with substantial unanticipated costs. In addition, litigation or threatened litigation could result in significant demands on the time and attention of our management team, distracting them from the pursuit of other company business.

Unfavorable outcomes in an intellectual property litigation could limit our research and development activities and/or our ability to commercialize certain products.

If third parties successfully assert intellectual property rights against us, we might be barred from using aspects of our technology platform, or barred from developing and commercializing related products. Prohibitions against using specified technologies, or prohibitions against commercializing specified products, could be imposed by a court or by a settlement agreement between us and a plaintiff. In addition, if we are unsuccessful in defending against allegations of patent infringement or misappropriation of trade secrets, we may be forced to pay substantial damage awards to the plaintiff. There is inevitable uncertainty in any litigation, including intellectual property litigation. There can be no assurance that we would prevail in any intellectual property litigation, even if the case against us is weak or flawed. If litigation leads to an outcome unfavorable to us, we may be required to obtain a license from the patent owner in order to continue our research and development programs or our partnerships or to market our products. It is possible that the necessary license will not be available to us on commercially acceptable terms, or at all. This could limit our research and development activities, our ability to commercialize specified products, or both.

Most of our competitors are larger than we are and have substantially greater resources. They are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. In addition, the uncertainties associated with litigation could have a material adverse effect on our ability to raise the funds necessary to continue our clinical trials, in-license needed technology or enter into strategic partnerships that would help us bring our product candidates to market.

In addition, any future patent litigation, interference or other administrative proceedings will result in additional expense and distraction of our personnel. An adverse outcome in such litigation or proceedings may expose us or our strategic partners to loss of our proprietary position, expose us to significant liabilities or require us to seek licenses that may not be available on commercially acceptable terms, if at all.

Tivozanib and certain of our product candidates are protected by patents exclusively licensed from other companies or institutions. If the licensors terminate the licenses or fail to maintain or enforce the underlying patents, our competitive position would be harmed and our partnerships could be terminated.

Certain of our product candidates and out-licensing arrangements depend on patents and/or patent applications owned by other companies or institutions with which we have entered into intellectual property licenses. In particular, we hold exclusive licenses from KKC for tivozanib and from St. Vincent's for therapeutic applications that benefit from inhibition or decreased expression or activity of MIC-1, which we refer to as GDF15 and which we use in our AV-380 program. We may enter into additional license agreements as part of the development of our business in the future. Our licensors may not successfully prosecute certain patent applications which we have licensed and on which our business depends or may prosecute them in a manner not in the best interests of our business. Even if patents issue from these applications, our licensors may fail to maintain these patents, may decide not to pursue litigation against third-party infringers, may fail to prove infringement or may fail to defend against counterclaims of patent invalidity or unenforceability. In addition, in spite of our best efforts, a licensor could claim that we have materially breached a license agreement and terminate the license, thereby removing our or our licensees' ability to obtain regulatory approval for and to

market any product covered by such license. If these in-licenses are terminated, or if the underlying patents fail to provide the intended market exclusivity, competitors would have the freedom to seek regulatory approval of, and to market, identical products. In addition, the partners to which we have sublicensed certain rights under these licenses, such as EUSA, would likely have grounds for terminating our partnerships if these licenses are terminated or the underlying patents are not maintained or enforced. This could have a material adverse effect on our results of operations, our competitive business position and our business prospects.

Confidentiality agreements with employees, consultants and third parties may not prevent unauthorized disclosure of trade secrets and other proprietary information.

In addition to patents, we rely on trade secrets, technical know-how and proprietary information concerning our business strategy in order to protect our competitive position. In the course of our research, development and business activities, we often rely on confidentiality agreements to protect our proprietary information. Such confidentiality agreements are used, for example, when we talk to potential strategic partners. In addition, each of our employees and consultants are required to sign a confidentiality agreement upon joining our company. We take steps to protect our proprietary information, and we seek to carefully draft our confidentiality agreements to protect our proprietary interests. Nevertheless, there can be no guarantee that an employee, consultant or an outside party will not make an unauthorized disclosure of our proprietary confidential information. This might happen intentionally or inadvertently. It is possible that a competitor will make use of such information, and that our competitive position will be compromised, in spite of any legal action we might take against persons making such unauthorized disclosures.

Trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants or outside scientific collaborators might intentionally or inadvertently disclose our trade secret information to competitors. Enforcing a claim that a third-party illegally obtained and is using any of our trade secrets is expensive and time-consuming, and the outcome is unpredictable. In addition, courts outside the United States sometimes are less willing than U.S. courts to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

Our research and development strategic partners may have rights to publish data and other information to which we have rights. In addition, we sometimes engage individuals or entities to conduct research relevant to our business. The ability of these individuals or entities to publish or otherwise publicly disclose data and other information generated during the course of their research is subject to certain contractual limitations. These contractual provisions may be insufficient or inadequate to protect our confidential information. If we do not apply for patent protection prior to such publication, or if we cannot otherwise maintain the confidentiality of our proprietary technology and other confidential information, then our ability to obtain patent protection or to protect our trade secret information may be jeopardized.

We rely significantly upon information technology, and any failure, inadequacy, interruption or security lapse of that technology, including any cyber security incidents, could harm our ability to operate our business effectively and result in a material disruption of our product development programs.

We could be subject to risks caused by misappropriation, misuse, leakage, falsification or intentional or accidental release or loss of information maintained in the information systems and networks of our company, including personal information of our employees. In addition, outside parties may attempt to penetrate our systems or those of our partners or fraudulently induce our employees or employees of our partners to disclose sensitive information to gain access to our data. Like other companies, we may experience threats to our data and systems, including malicious codes and computer viruses, cyber-attacks or other system failures. Any system failure, accident or security breach that causes interruptions in our operations, for us or our partners, could result in a material disruption of our product development programs and business operations, in addition to possibly requiring substantial expenditures of resources to remedy. For example, the loss of clinical trial data from completed clinical trials could result in delays in our regulatory approval efforts and we could incur significant increases in costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss of, or damage to, our data or applications, or inappropriate public disclosure of confidential or proprietary information, we may incur liabilities and the further development of our product candidates may be delayed. In addition, we may not have adequate insurance coverage to provide compensation for any losses associated with such events.

The number and complexity of these threats continue to increase over time. If a material breach of our security or that of our partners occurs, the market perception of the effectiveness of our security measures could be harmed, we could lose business and our reputation and credibility could be damaged. We could be required to expend significant amounts of money and other resources to repair or replace information systems or networks. Although we develop and maintain

systems and controls designed to prevent these events from occurring, and we have a process to identify and mitigate threats, the development and maintenance of these systems, controls and processes is costly and requires ongoing monitoring and updating as technologies change and efforts to overcome security measures become more sophisticated. Moreover, despite our efforts, the possibility of these events occurring cannot be eliminated entirely.

Intellectual property rights may not 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 or antibodies 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.
- The term of patents that we own or have exclusively licensed may be insufficient to prevent competitors from introducing products that are competitive with our product candidates.
- If the licenses we have that relate to our product candidates are terminated by the licensors, we may be prevented from commercializing our product candidates.
- 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 might not lead to issued patents.
- Issued patents that we own or have exclusively licensed may not provide us with a competitive advantage; for example, our issued patents may not be broad enough to prevent the commercialization of products competitive with one or more of our product candidates, 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 or our strategic partners' existing or potential commercial markets.
- We may not develop additional proprietary technologies that are patentable.
- The patents of others may have an adverse effect on our business.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involves both technological complexity and legal complexity. Therefore, obtaining and enforcing biopharmaceutical patents is costly, time-consuming and inherently uncertain. In addition, several events in the last decade have increased uncertainty with regard to our ability to obtain patents in the future and the value of patents once obtained. Among these, in September 2011, patent reform legislation passed by Congress was signed into law in the United States. The patent law introduced changes including a first-to-file system for determining which inventors may be entitled to receive patents, and post-grant challenges, such as inter-partes review and post-grant review proceedings that allow third parties to challenge newly issued patents. The burden of proof required for challenging a patent in these proceedings is lower than in district court litigation, and patents in the biopharmaceutical industry have been successfully challenged using these new post-grant challenges. In addition, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in specified circumstances or weakening the rights of patent owners in specified situations. Depending on decisions by the U.S. Congress, the federal courts and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could further weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

Risks Related to Regulatory Approval and Marketing of Our Product Candidates and Other Legal Compliance Matters

The regulatory approval process is expensive, time-consuming and uncertain and may prevent us from obtaining approvals for the commercialization of some or all of our product candidates. If we or our collaborators are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to commercialize our product candidates, and our ability to generate revenue will be materially impaired.

Our product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, export and import, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States, and by the EMA and comparable regulatory authorities in other countries. Failure to obtain marketing approval for a product candidate will prevent us from commercializing the product candidate. We have only limited experience in filing and supporting the applications necessary to gain marketing approvals and expect to rely on third-party CROs to assist us in this process.

The process of obtaining marketing approvals, both in the United States and abroad, is expensive and may take many years, especially if additional clinical trials are required. Securing marketing approval requires the submission of extensive preclinical and clinical data and supporting information to the various regulatory authorities for each therapeutic indication to establish the product candidate's safety and efficacy. It also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities by, the relevant regulatory authority. Our product candidates may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may delay or preclude our obtaining marketing approval or prevent or limit commercial use.

In addition, the FDA and comparable authorities in other countries have substantial discretion in the approval process and may refuse to accept any application or may decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. Changes in marketing approval policies during the development period, changes in or the enactment of additional statutes or regulations or changes in regulatory review for each submitted product application, may cause delays in the approval or rejection of an application. In addition, a regulatory agency's varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent marketing approval of a product candidate. For example, in June 2013, the FDA issued the 2013 CRL informing us that it would not approve tivozanib for the first-line treatment of RCC based solely on the data from the TIVO-1 trial.

In addition, disruptions at the FDA and other agencies due to COVID-19 may prolong the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical employees and stop critical activities. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

Failure to obtain marketing approval in foreign jurisdictions would prevent our product candidates from being marketed abroad and may limit our ability to generate revenue from product sales.

In order to market and sell our medicines in the EU and many other jurisdictions, we or our collaborators must obtain marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the United States, a product must be approved for reimbursement before the product can be approved for sale in that country. We or our collaborators may not obtain approvals from regulatory authorities outside the United States on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the United States does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. We may not be able to file for marketing approvals and may not receive necessary approvals to commercialize our products in any particular market.

In many countries outside the United States, a product candidate must also be approved for reimbursement before it can be sold in that country. In some cases, the price that we intend to charge for our products, if approved, is also subject to approval. Obtaining non-U.S. regulatory approvals and compliance with non-U.S. regulatory requirements could result

in significant delays, difficulties and costs for us and any future collaborators and could delay or prevent the introduction of our product candidates in certain countries. In addition, if we or any future collaborators fail to obtain the non-U.S. approvals required to market our product candidates outside the United States or if we or any future collaborators fail to comply with applicable non-U.S. regulatory requirements, our target market will be reduced and our ability to realize the full market potential of our product candidates will be harmed and our business, financial condition, results of operations and prospects may be adversely affected.

Additionally, we could face heightened risks with respect to seeking marketing approval in the United Kingdom as a result of the withdrawal of the United Kingdom from the EU, commonly referred to as Brexit. Pursuant to the formal withdrawal arrangements agreed between the United Kingdom and the EU, the United Kingdom withdrew from the EU, effective December 31, 2020. On December 24, 2020, the United Kingdom and the EU entered into a Trade and Cooperation Agreement. The agreement sets out certain procedures for approval and recognition of medical products in each jurisdiction. Any delay in obtaining, or an inability to obtain, any marketing approvals, as a result of the Trade and Cooperation Agreement would prevent us from commercializing any product candidates in the United Kingdom and/or the EU and restrict our ability to generate revenue and achieve and sustain profitability. If any of these outcomes occur, we may be forced to restrict or delay efforts to seek regulatory approval in the United Kingdom and/or the EU for any product candidates, which could significantly and materially harm our business.

We may not be able to obtain orphan drug designation or orphan drug exclusivity for our product candidates, and, even if we do, that exclusivity may not prevent the FDA or the EMA from approving other competing products.

Regulatory authorities in some jurisdictions, including in the United States and EU, may designate drugs and biologics for relatively small patient populations as orphan drugs. Under the Orphan Drug Act, the FDA may designate a product as an orphan drug if it is intended to treat a rare disease or condition, which is generally defined as a patient population of fewer than 200,000 individuals annually in the United States. Generally, a product with orphan drug designation only becomes entitled to orphan drug exclusivity if it receives the first marketing approval for the indication for which it has such designation, in which case the FDA or the EMA will be precluded from approving another marketing application for the same product for that indication for the applicable exclusivity period. The applicable exclusivity period is seven years in the United States and ten years in the EU. The European exclusivity period can be reduced to six years if a product no longer meets the criteria for orphan drug designation or if the product is sufficiently profitable so that market exclusivity is no longer justified.

We or our collaborators may seek orphan drug designations for other product candidates and may be unable to obtain such designations. Moreover, even if we do secure such designations and orphan drug exclusivity for a product, that exclusivity may not effectively protect the product from competition because different products can be approved for the same condition. Further, even after an orphan drug is approved, the FDA can subsequently approve the same drug or biologic for the same condition if the FDA concludes that the later product is clinically superior in that it is shown to be safer, to be more effective or to make a major contribution to patient care. Finally, orphan drug exclusivity may be lost if the FDA or the EMA determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the product to meet the needs of patients with the rare disease or condition.

Our recently approved product, FOTIVDA, and any product candidate for which we or our collaborators obtain marketing approval are subject to ongoing regulation and could be subject to restrictions or withdrawal from the market, and we may be subject to substantial penalties if we fail to comply with regulatory requirements.

Our recently approved product, FOTIVDA, and any product candidate for which we or our collaborators obtain marketing approval in the future will be subject to continual requirements of and review by the FDA and other regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration and listing requirements, cGMP requirements relating to quality control and manufacturing, quality assurance and corresponding maintenance of records and documents, and requirements regarding the distribution of samples to physicians and recordkeeping. Even if marketing approval of a product candidate is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the medicine, including the requirement to implement a risk evaluation and mitigation strategy. For example, FDA approval of FOTIVDA is subject to limitations on the indicated uses for which FOTIVDA may be marketed, specifically the treatment of adults with relapsed or refractory advanced RCC who have progressed following two or more systemic therapies. Accordingly, we expect to continue to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production, product surveillance and quality control. If we fail to comply with these requirements, we could have the

marketing approval for FOTIVDA withdrawn by regulatory authorities and our ability to market any products could be limited, which could adversely affect our ability to achieve or sustain profitability.

We and our collaborators must also comply with requirements concerning advertising and promotion for FOTIVDA or any of our product candidates for which we may obtain regulatory approval. Promotional communications with respect to prescription products are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved labeling. Thus, we will not be able to promote any products we develop for indications or uses for which they are not approved. The FDA and other agencies, including the Department of Justice, or the DOJ, closely regulate and monitor the post-approval marketing and promotion of products to ensure that they are marketed and distributed only for the approved indications and in accordance with the provisions of the approved labeling. Violations of the Federal Food, Drug, and Cosmetic Act and other statutes, including the False Claims Act, relating to the promotion and advertising of prescription products may lead to investigations and enforcement actions alleging violations of federal and state health care fraud and abuse laws, as well as state consumer protection laws.

Failure to comply with regulatory requirements, may yield various results, including:

- restrictions on such products, manufacturers or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on distribution or use of a product;
- requirements to conduct post-marketing studies or clinical trials;
- warning letters or untitled letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- damage to relationships with collaborators;
- unfavorable press coverage and damage to our reputation;
- fines, restitution or disgorgement of profits or revenues;
- suspension or withdrawal of marketing approvals;
- refusal to permit the import or export of our products;
- product seizure;
- injunctions or the imposition of civil or criminal penalties; and
- litigation involving patients using our products.

Non-compliance with EU requirements regarding safety monitoring or pharmacovigilance, and with requirements related to the development of products for the pediatric population, can also result in significant financial penalties. Similarly, failure to comply with the EU's requirements regarding the protection of personal information can also lead to significant penalties and sanctions.

Our relationships with healthcare providers, physicians and third-party payors are subject to applicable anti-kickback, fraud and abuse and other healthcare laws and regulations, which, in the event of a violation, could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors will play a primary role in the recommendation and prescription of FOTIVDA and any product candidate for which we may obtain marketing approval in the future. Our arrangements with healthcare providers, physicians and third-party payors may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute FOTIVDA and any products for which we may obtain marketing approval in the future. Restrictions under applicable federal and state healthcare laws and regulations include the federal Anti-Kickback Statute, the False Claims Act, Health Insurance Portability and Accountability Act of 1996, or HIPAA, and the Physician Payments Sunshine Act. There are also analogous state and foreign laws and regulations that may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by third-party payors, including

private insurers. Further, some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and may require manufacturers to report information related to payments and other transfers of value to other healthcare providers and healthcare entities, or marketing expenditures. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations involve substantial costs.

If our business practices or operations are found to be in violation of any of the laws described above, other or future healthcare laws or case law or any governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, individual imprisonment, integrity obligations, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. Any such penalties could adversely affect our financial results. We have implemented a corporate compliance program designed to ensure that we will market and sell FOTIVDA and any future products that we successfully develop from our product candidates in compliance with all applicable laws and regulations, but we cannot guarantee that this program will protect 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, including the imposition of significant fines or other sanctions.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, individual imprisonment, integrity obligations, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. If any of the physicians or other healthcare providers or entities with whom we do business is found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusion from government funded healthcare programs, which could impact us.

Current and future legislation may increase the difficulty and cost for us and any collaborators to obtain marketing approval of and commercialize our product candidates and affect the prices we, or they, may obtain.

In the United States and foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell FOTIVDA or any product candidates for which we may obtain marketing approval. We expect that current laws, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we or any collaborators may receive for FOTIVDA or any product candidate for which we may obtain marketing approval in the future.

In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or collectively the ACA. Since enactment of the ACA, there have been, and continue to be, numerous legal challenges and Congressional actions to repeal and replace provisions of the law. For example, with the enactment of the Tax Cuts and Jobs Act of 2017, or TCJA, which was signed by President Trump on December 22, 2017, Congress repealed the "individual mandate." The repeal of this provision, which requires most Americans to carry a minimal level of health insurance, became effective in 2019. Further, on December 14, 2018, a U.S. District Court judge in the Northern District of Texas ruled that the individual mandate portion of the ACA is an essential and inseparable feature of the ACA, and therefore because the mandate was repealed as part of the TCJA, the remaining provisions of the ACA are invalid as well. The U.S. Supreme Court agreed to hear this case and a ruling by the Court is expected sometime this year. Litigation and legislation over the ACA are likely to continue, with unpredictable and uncertain results.

The costs of prescription pharmaceuticals have also been the subject of considerable discussion in the United States. To date, there have been several recent U.S. congressional inquiries, as well as proposed and enacted state and federal legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, reduce the costs of drugs under Medicare and reform government program reimbursement methodologies for drug products. To those ends, the Trump Administration finalized a rulemaking allowing states or certain other non-federal government entities to submit importation program proposals to the FDA for

review and approval. Applicants are required to demonstrate that their importation plans pose no additional risk to public health and safety and will result in significant cost savings for consumers. The FDA has issued draft guidance that would allow manufacturers to import their own FDA-approved drugs that are authorized for sale in other countries (multi-market approved products).

Further, President Trump issued five executive orders intended to lower the costs of prescription drug products. Several of these orders are reflected in recently promulgated regulations, and one of these regulations is currently subject to a nationwide preliminary injunction. The Biden Administration has frozen certain of the previous administration's measures to reform drug prices, pending further review. It remains to be seen how the Biden Administration will address this issue but, under Medicare Part D, the new administration may seek to establish a ceiling for the launch prices of all branded, biologic, and certain generic drugs by referencing the average price of these drugs in other developed countries. At the same time, the administration may seek to limit Medicare Part D and public option drug prices through a tax penalty on manufacturers for increases in the cost of drugs and biologics above the general inflation rate. The Biden administration has agreed to delay for a year the implementation of one of President Trump's signature drug pricing policies. The policy at issue would have prevented drug makers and middlemen from negotiating rebates on prescription drugs. The prohibition was scheduled to go into effect in January 2022, but the Biden administration agreed to delay it until 2023.

At the state level, legislatures are increasingly passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. In addition, regional health care authorities and individual hospitals are increasingly using bidding procedures to determine what pharmaceutical products and which suppliers will be included in their prescription drug and other health care programs. These measures could reduce the ultimate demand for our products, once approved, or put pressure on our product pricing. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for FOTIVDA or our product candidates or additional pricing pressures.

Finally, outside the United States, in some nations, including those of the EU, the pricing of prescription pharmaceuticals is subject to governmental control and access. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we or our collaborators may be required to conduct a clinical trial that compares the cost-effectiveness of our product to other available therapies. If reimbursement of FOTIVDA is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be materially harmed.

Compliance with global privacy and data security requirements could result in additional costs and liabilities to us or inhibit our ability to collect and process data globally, and the failure to comply with such requirements could subject us to significant fines and penalties, which may have a material adverse effect on our business, financial condition or results of operations.

The regulatory framework for the collection, use, safeguarding, sharing, transfer and other processing of information worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. Globally, virtually every jurisdiction in which we operate has established its own data security and privacy frameworks with which we must comply, with additional laws and amendments being passed on a regular basis. As one example, the collection, use, disclosure, transfer or other processing of personal data regarding individuals in the EU, including personal health data, is subject to the EU General Data Protection Regulation, or the GDPR, which applies to all member states of the European Economic Area, or EEA. The GDPR is wide-ranging in scope and imposes numerous requirements on companies that process personal data. The GDPR imposes significant obligations with respect to clinical trials conducted in the EEA. In addition, the GDPR also imposes strict rules on the transfer of personal data to countries outside the EU, including the United States and, as a result, increases the scrutiny that clinical trial sites located in the EEA should apply to transfers of personal data from such sites to countries that are considered to lack an adequate level of data protection, such as the United States. The GDPR also permits data protection authorities to require destruction of improperly gathered or used personal information and/or impose substantial fines for violations of the GDPR and it also confers a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies and obtain compensation for damages resulting from violations of the GDPR. In addition, the GDPR provides that EU member states may make their own further laws and regulations limiting the processing of personal data, including genetic, biometric or health data. Compliance with the GDPR is a rigorous and time-intensive process that may increase our cost of

doing business or require us to change our business practices, and despite those efforts, there is a risk that we may be subject to fines and penalties, litigation, and reputational harm in connection with any EU activities.

Given the breadth and depth of changes in data protection obligations, preparing for and complying with these requirements is rigorous and time intensive and requires significant resources and a review of our technologies, systems and practices, as well as those of any third-party collaborators, service providers, contractors or consultants that process or transfer personal data collected in the EU and otherwise across the world. The GDPR and other changes in laws or regulations associated with the enhanced protection of certain types of sensitive data, such as healthcare data or other personal information from our clinical trials, could require us to change our business practices and put in place additional compliance mechanisms, may interrupt or delay our development, regulatory and commercialization activities and increase our cost of doing business, and could lead to government enforcement actions, private litigation and significant fines and penalties against us and could have a material adverse effect on our business, financial condition or results of operations.

Similar actions are either in place or under way in the United States. There are a broad variety of data protection laws that are applicable to our activities, and a wide range of enforcement agencies at both the state and federal levels that can review companies for privacy and data security concerns based on general consumer protection laws. The Federal Trade Commission and state attorneys general all are aggressive in reviewing privacy and data security protections for consumers. New laws also are being considered at both the state and federal levels. For example, the California Consumer Privacy Act—which went into effect on January 1, 2020—is creating similar risks and obligations as those created by GDPR, though the California Consumer Privacy Act does exempt certain information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects (the Common Rule). Many other states are considering similar legislation. A broad range of legislative measures also have been introduced at the federal level. Accordingly, failure to comply with federal and state laws (both those currently in effect and future legislation) regarding privacy and security of personal information could expose us to fines and penalties under such laws. There also is the threat of consumer class actions related to these laws and the overall protection of personal data. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could harm our reputation and our business.

Laws and regulations governing any international operations we may have in the future may preclude us from developing, manufacturing and selling certain products outside of the United States and require us to develop and implement costly compliance programs.

If we expand our operations outside of the United States, we must dedicate additional resources to comply with numerous laws and regulations in each jurisdiction in which we plan to operate. The Foreign Corrupt Practices Act, or FCPA, prohibits any U.S. individual or business from paying, offering, authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with certain accounting provisions requiring the company to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, and to devise and maintain an adequate system of internal accounting controls for international operations.

Compliance with the FCPA is expensive and difficult, particularly in countries in which corruption is a recognized problem. In addition, the FCPA presents particular challenges in the pharmaceutical industry, because, in many countries, hospitals are operated by the government, and doctors and other hospital employees are considered foreign officials. Certain payments to hospitals in connection with clinical trials and other work have been deemed to be improper payments to government officials and have led to FCPA enforcement actions.

Various laws, regulations and Executive Orders also restrict the use and dissemination outside of the United States, or the sharing with certain non-U.S. nationals, of information classified for national security purposes, as well as certain products and technical data relating to those products. If we expand our presence outside of the United States, it will require us to dedicate additional resources to comply with these laws, and these laws may preclude us from developing, manufacturing, marketing or selling certain products and product candidates outside of the United States, which could limit our growth potential and increase our development costs.

The failure to comply with laws governing international business practices may result in substantial civil and criminal penalties and suspension or debarment from government contracting. The SEC also may suspend or bar issuers from trading securities on U.S. exchanges for violations of the FCPA's accounting provisions.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on our business.

We are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. From time to time and in the future, our operations may involve the use of hazardous and flammable materials, including chemicals and biological materials, and may also produce hazardous waste products. Even if we contract with third parties for the disposal of these materials and waste products, we cannot completely eliminate the risk of contamination or injury resulting from these materials. In the event of contamination or injury resulting from the use or disposal of our hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties for failure to comply with such laws and regulations.

We maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, but this insurance may not provide adequate coverage against potential liabilities. However, we do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. Current or future environmental laws and regulations may impair our research, development or production efforts, which could adversely affect our business, financial condition, results of operations or prospects. In addition, failure to comply with these laws and regulations may result in substantial fines, penalties or other sanctions.

Risks Related to Employee Matters and Managing Potential Growth

If we fail to attract and keep senior management, we may be unable to successfully develop our product candidates, conduct our clinical trials and commercialize our product candidates.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management personnel. We are highly dependent upon our senior management, as well as others on our management team. The loss of services of employees and, in particular, of a member of management could delay or prevent our ability to successfully commercialize FOTIVDA in the United States, our ability to successfully maintain or enter into new licensing arrangements or collaborations, the successful development of our product candidates, the completion of our planned clinical trials or the commercialization of our product candidates. We do not carry "key person" insurance covering any members of our senior management. Our employment arrangements with all of these individuals are "at will," meaning they or we can terminate their service at any time.

We face intense competition for qualified individuals from numerous pharmaceutical and biotechnology companies, universities, governmental entities and other research institutions, many of which have substantially greater resources with which to reward qualified individuals than we do. We may face challenges in retaining our existing senior management and key employees and recruiting new employees to join our company as our business needs change. In addition, the COVID-19 pandemic may negatively impact our ability to recruit and build out our organization as planned. We may be unable to attract and retain suitably qualified individuals, and our failure to do so could have an adverse effect on our ability to implement our future business plans.

Our employees or consultants may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of employee or consultant fraud or other misconduct. Misconduct by employees or consultants could include intentional failures to comply with FDA regulations, to provide accurate information to the FDA, to comply with manufacturing standards we have established, to comply with federal and state health-care fraud and abuse laws and regulations, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, marketing, sales 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 or consultant 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 or consultant 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, including the imposition of significant fines or other sanctions.

In addition, during the course of our operations, our directors, executives, employees and consultants may have access to material nonpublic information regarding our business, our results of operations or potential transactions we are considering. Despite the adoption of an Insider Trading Policy, we may not be able to prevent a director, executive, employee or consultant from trading in our common stock on the basis of, or while having access to, material nonpublic information. If a director, executive, employee or consultant was to be investigated, or an action was to be brought against a director, executive, employee or consultant for insider trading, it could have a negative impact on our reputation and our stock price. Such a claim, with or without merit, could also result in substantial expenditures of time and money, and divert attention of our management team from other tasks important to the success of our business.

Risks Related to Ownership of Our Common Stock

The market price of our common stock has been, and is likely to be, highly volatile, and could fall below the price you paid. A significant decline in the value of our stock price could also result in securities class-action litigation against us.

The market price of our common stock has been, and is likely to continue to be, highly volatile and subject to wide fluctuations in price in response to various factors, many of which are beyond our control, including:

- announcements relating to our product, FOTIVDA, including as it relates to commercial launch performance, sales and any future regulatory matters;
- new products, product candidates or new uses for existing products introduced or announced by our strategic partners, or our competitors, and the timing of these introductions or announcements;
- actual or anticipated results from and any delays in our clinical trials;
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock;
- the effect of the COVID-19 outbreak on the healthcare system and the economy generally and on our supply chain, preclinical studies, clinical trials, commercial activities and other operations specifically;
- the results of regulatory reviews and other regulatory correspondence relating to our product, product candidates or our clinical trials;
- the results of our efforts to develop, acquire or in-license additional product candidates or products;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- announcements by us of material developments in our business, financial condition, partnerships and/or operations;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures and capital commitments;
- additions or departures of key scientific or management personnel;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- actual or anticipated changes in revenue, expense or earnings estimates, development timelines or recommendations by securities analysts; and
- general economic and market conditions on our industry and market conditions, 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.

In addition, the stock market in general and the market for biotechnology and biopharmaceutical companies in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the

operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance.

Periods of volatility in the market for a company's stock are often followed by litigation against the company. For example, following our failure to obtain FDA approval for tivozanib in 2013, we and certain of our former officers and directors were involved in several legal proceedings. Following our January 2019 announcement that the FDA did not recommend we file an NDA for tivozanib at that time, several lawsuits were filed against us, our directors, and certain of our current and former officers. While the 2019 Class Action was dismissed, any litigation instituted against us in the future could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business and financial condition.

We and our collaborators may not achieve development and commercialization goals in the estimated time frames that we publicly announce, which could have an adverse impact on our business and could cause our stock price to decline.

We set goals and make public statements regarding our expected timing for certain accomplishments, such as statements we have made about the initiation and completion of clinical trials, filing and approval of regulatory applications and other developments and milestones under our research and development programs and those of our partners and collaborators for tivozanib, ficlatuzumab, AV-380 and AV-203. The actual timing of these events can vary significantly due to a number of factors, including those discussed in "Part II, Item 1A. Risk Factors." As a result, there can be no assurance that our preclinical studies and clinical trials will advance or be completed in the time frames we expect or announce, that we will make regulatory submissions or receive regulatory approvals as planned, that we will be successful in our commercial launch or that we will be able to adhere to our currently anticipated schedule for the achievement of key milestones under any of our programs. If we fail to achieve one or more of the events described above as planned, our business could be materially adversely affected and the price of our common stock could decline.

Our management has broad discretion over our use of available cash and cash equivalents and might not spend our available cash and cash equivalents in ways that increase the value of your investment.

Our management has broad discretion on where and how to use our cash and cash equivalents and, as a stockholder, you rely on the judgment of our management regarding the application of our available cash and cash equivalents to fund our operations. Our management might not apply our cash and cash equivalents in ways that increase the value of your investment. We expect to use a substantial portion of our cash to fund existing and future research and development of our preclinical and clinical product candidates, with the balance, if any, to be used for working capital and other general corporate purposes, which may in the future include investments in, or acquisitions of, complementary businesses, joint ventures, partnerships, services or technologies. Our management might not be able to yield a significant return, if any, on any investment of this cash. You will not have the opportunity to influence our decisions on how to use our cash reserves.

If we fail to meet the requirements for continued listing on the Nasdaq Capital Market, our common stock could be delisted from trading, which would decrease the liquidity of our common stock and our ability to raise additional capital.

Our common stock is currently listed on the Nasdaq Capital Market, or Nasdaq. We are required to meet specified requirements to maintain our listing on Nasdaq, including a minimum market value of listed securities of \$35.0 million, a minimum bid price of \$1.00 per share for our common stock and other continued listing requirements.

In the past we have, from time to time, received deficiency letters from Nasdaq as a consequence of our failure to satisfy such requirements. Although we have been able to regain compliance with the listing requirements within the manner and time periods prescribed by Nasdaq in the past, there can be no assurance that we will be able to maintain compliance with the Nasdaq continued listing requirements in the future or regain compliance with respect to any future deficiencies. If we fail to satisfy Nasdaq's continued listing requirements, we may transfer to the OTC Bulletin Board, which generally has lower financial requirements for initial listing, to avoid delisting. However, we may not be able to satisfy the initial listing requirements for the OTC Bulletin Board. Having our common stock trade on the OTC Bulletin Board could adversely affect the liquidity of our common stock. Any such event could make it more difficult to dispose of, or obtain accurate quotations for the price of, our common stock, and there also would likely be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. We may also face other material adverse consequences in such event, such as negative publicity, a decreased ability to obtain additional financing, diminished investor and/or employee confidence and the loss of business development opportunities, some or all of which may contribute to a further decline in our stock price.

Fluctuations in our quarterly operating results could adversely affect the price of our common stock.

Our quarterly operating results may fluctuate significantly. Some of the factors that may cause our operating results to fluctuate on a period-to-period basis include:

- the level of net product revenues from the sales of FOTIVDA;
- the level of expenses incurred to commercialize FOTIVDA;
- the level of expenses incurred in connection with our clinical development programs, including development and manufacturing costs relating to our clinical development candidates;
- the implementation of restructuring and cost-savings strategies;
- the implementation or termination of collaboration, licensing, manufacturing or other material agreements with third parties, and non-recurring revenue or expenses under any such agreement;
- costs associated with litigation in which we may become involved;
- changes in our Loan Agreement, including the existence of any event of default that may accelerate then remaining principal payments and fees due thereunder;
- non-cash changes in fair value related to re-valuations of our outstanding warrant liability as a result of fluctuations in our stock price; and
- compliance with regulatory requirements.

Period-to-period comparisons of our historical and future financial results may not be meaningful, and investors should not rely on them as an indication of future performance. Our fluctuating results may fail to meet the expectations of securities analysts or investors. Our failure to meet these expectations may cause the price of our common stock to decline.

Unstable market and economic conditions may have serious adverse consequences on our business, financial condition and stock price.

Global credit and financial markets have experienced extreme volatility and disruptions since 2020 due to the COVID-19 pandemic and the government measures taken in response to the pandemic. We expect that rapid or extended periods of deterioration in credit and financial markets and confidence in economic conditions will continue. Our general business strategy may be adversely affected by external economic conditions and a volatile business environment or unpredictable and unstable market conditions. If the equity and credit markets are not favorable at any time we seek to raise capital, it may make any necessary debt or equity financing more difficult, more costly and more dilutive. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our growth strategy, financial performance and stock price and could require us to delay or abandon clinical development plans. In addition, there is a risk that one or more of our current service providers, manufacturers or other partners may not survive economically turbulent times, which could directly affect our ability to attain our operating goals on schedule and on budget.

As of September 30, 2021, we had approximately \$94.0 million of cash, cash equivalents and marketable securities consisting of cash on deposit with banks and in a U.S. government money market fund, and high-grade debt securities, including commercial paper. As of the date of this report, we are not aware of any downgrades, material losses or other significant deterioration in the fair value of our cash equivalents or marketable securities. However, no assurance can be given that deterioration in conditions of the global credit and financial markets would not negatively impact our current portfolio of cash equivalents and marketable securities or our ability to meet our financing objectives. Dislocations in the credit market may adversely impact the value and/or liquidity of cash equivalents and marketable securities owned by us.

Future sales of shares of our common stock, including shares issued upon the exercise of currently outstanding options, could negatively affect our stock price.

A substantial portion of our outstanding common stock can be traded without restriction at any time. Some of these shares are currently restricted as a result of securities laws, but will be able to be sold, subject to any applicable volume limitations under federal securities laws with respect to affiliate sales, in the near future. As such, sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell such shares, could reduce the market

price of our common stock. In addition, we have a significant number of shares that are subject to outstanding options. The exercise of these options and the subsequent sale of the underlying common stock could cause a further decline in our stock price. These sales also might make it difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline.

The trading market for our common stock may depend in part on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will cover us, or provide favorable coverage. A lack of research coverage may negatively impact the market price of our common stock. To the extent we do have analyst coverage, if one or more analysts downgrade our stock or change their opinion of our stock, our share price would likely decline. In addition, if one or more analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Provisions in our certificate of incorporation, our by-laws or Delaware law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the market price of our common stock.

Provisions of our certificate of incorporation, our by-laws or Delaware law may have the effect of deterring unsolicited takeovers or delaying or preventing a change in control of our company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interest. These provisions include:

- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to act by written consent or to call special meetings;
- the ability of our board of directors to make, alter or repeal our by-laws; and
- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could be used to institute a rights plan, or a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our board of directors.

In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that a stockholder could receive a premium for shares of our common stock held by a stockholder in an acquisition.

Our business could be negatively affected as a result of the actions of activist stockholders.

Proxy contests have been waged against companies in the biopharmaceutical industry over the last few years. If faced with a proxy contest, we may not be able to successfully respond to the contest, which would be disruptive to our business. Even if we are successful, our business could be adversely affected by a proxy contest because:

- responding to proxy contests and other actions by activist stockholders may be costly and time-consuming, and may disrupt our operations and divert the attention of management and our employees;
- perceived uncertainties as to the potential outcome of any proxy contest may result in our inability to consummate potential acquisitions, collaborations or in-licensing opportunities and may make it more difficult to attract and retain qualified personnel and business partners; and

- if individuals that have a specific agenda different from that of our management or other members of our board of directors are elected to our board of directors as a result of any proxy contest, such an election may adversely affect our ability to effectively and timely implement our strategic plan and create additional value for our stockholders.

Failure to maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our ability to produce accurate financial statements and on our stock price.

Section 404 of the Sarbanes-Oxley Act of 2002 requires us, on an annual basis, to review and evaluate our internal controls, and requires our independent registered public accounting firm to attest to the effectiveness of our internal controls. Despite our efforts, we can provide no assurance as to our, or our independent registered public accounting firm's, conclusions with respect to the effectiveness of our internal control over financial reporting under Section 404. There is a risk that neither we nor our independent registered public accounting firm will be able to conclude within the prescribed timeframe that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements.

If we are unable to successfully remediate any material weaknesses in our internal control, the accuracy and timing of our financial reporting may be adversely affected, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in our financial reporting and our stock price may decline as a result. We also could become subject to investigations by Nasdaq, the SEC or other regulatory authorities.

We do not expect to pay any cash dividends for the foreseeable future.

Our stockholders should not rely on an investment in our common stock to provide dividend income. We do not anticipate that we will pay any cash dividends to holders of our common stock in the foreseeable future. Instead, we plan to retain any earnings to maintain and expand our existing operations. In addition, our ability to pay cash dividends is currently prohibited by the terms of our debt financing arrangements and any future debt financing arrangement may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. In addition, the terms of the Loan Agreement preclude, and any future debt agreements may preclude us from, paying dividends. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any return on their investment. As a result, investors seeking cash dividends should not purchase our common stock.

Changes in tax laws or in their implementation or interpretation may adversely affect our business and financial condition.

The rules dealing with U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect us or holders of our common stock. In recent years, many such changes have been made and changes are likely to continue to occur in the future. For example, the TCJA was enacted in 2017 and significantly reformed the Internal Revenue Code of 1986, as amended, or the Code. In addition, as part of Congress' response to the COVID-19 pandemic, the Families First Coronavirus Response Act, or FFCR Act, was enacted on March 18, 2020, and the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, was enacted on March 27, 2020. Both contain numerous tax provisions.

Regulatory guidance under the TCJA, the FFCR Act and the CARES Act is and continues to be forthcoming, and such guidance could ultimately increase or lessen impact of these laws on our business and financial condition. It is also possible that Congress will enact additional legislation in connection with the COVID-19 pandemic, some of which could have an impact on our company. In addition, it is uncertain if and to what extent various states will conform to the TCJA, the FFCR Act or the CARES Act. We urge investors to consult with their legal and tax advisers regarding the implications of the TCJA, the FFCR Act and the CARES Act and other changes in tax laws on an investment in our common stock. Recent changes in tax law may adversely affect our business or financial condition.

We might not be able to utilize a significant portion of our net operating loss carryforwards and research and development tax credit carryforwards.

As of December 31, 2020, we had federal net operating loss carryforwards of \$565.8 million, of which \$502.6 million will, if not used, expire at various dates through 2037, and federal research and development tax credit carryforwards of \$11.8 million, which will, if not used, expire at various dates through 2040. To the extent that they expire unused, these net operating loss and tax credit carryforwards will not be available to offset our future income tax liabilities. Federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such carryforwards is limited to 80% of our taxable income in the year in which such carryforwards are used.

In addition, under Section 382 of the Code and corresponding provisions of state law, if a corporation undergoes an “ownership change,” which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation’s ability to use its pre-change net operating loss and credit carryforwards to reduce its tax liability for post-change periods may be limited. We have not determined if we have experienced Section 382 ownership changes in the past and if a portion of our net operating loss and tax credit carryforwards is subject to an annual limitation under Section 382. We also may experience ownership changes in the future as a result of shifts in our stock ownership, some of which may be outside of our control. In addition, we have not conducted a detailed study to document whether our historical activities qualify to support the research and development credits currently claimed as a carryforward. A detailed study could result in adjustment to our research and development credit carryforwards. If we determine that an ownership change has occurred and our ability to use our historical net operating loss and tax credit carryforwards is materially limited, or if our research and development carryforwards are adjusted, our use of those attributes to offset future income tax liabilities would be limited.

Item 6. Exhibits.**Exhibit Index**

Exhibit Number	Description of Exhibit	Incorporated by Reference		Date of Filing	Exhibit Number	Filed Herewith
		Form	File Number			
10.1	Termination, Separation and Release of Claims Agreement, dated August 27, 2021 by and between AVEO Pharmaceuticals, Inc. and Michael Needle, M.D.	8-K	001-34655	08/27/2021	10.1	
10.2†	Amended and Restated License Agreement, dated August 13, 2015, by and between the Registrant and St. Vincent's Hospital Sydney Limited					X
31.1	Certification of principal executive officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
31.2	Certification of principal financial officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
32.1	Certification of principal executive officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2	Certification of principal financial officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).					

† Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

SIGNATURES

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

AVEO PHARMACEUTICALS, INC.

Date: November 8, 2021

By: _____ /s/ Erick Lucera
Erick Lucera
Chief Financial Officer and Principal Financial and Accounting Officer

Certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) is the type of information that the registrant treats as private or confidential. Double asterisks denote omissions.



Amended and Restated License Agreement

St Vincent's Hospital Sydney Limited

ABN 77 054 038 872

and

AVEO Pharmaceuticals, Inc.

Anti MIC-1 antibody for treatment of
cachexia, etc.

Amended and Restated as of August 13, 2015

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THIS AMENDED AND RESTATED LICENSE AGREEMENT, is made on August 13, 2015 (the "**Amendment Effective Date**"),

BETWEEN:

- (1) **St Vincent's Hospital Sydney Limited** ABN 77 054 038 872 whose registered office is at 390 Victoria Street, Darlinghurst NSW 2010 Australia ("**St Vincent's**"); and
- (2) **AVEO Pharmaceuticals, Inc.**, a company incorporated under the laws of the State of Delaware, USA, whose registered office is at One Broadway, 14th Floor, Cambridge MA 02142 USA ("**AVEO**").

This Agreement amends and restates the License Agreement, dated July 2, 2012 (the "**Effective Date**"), by and between St. Vincent's and AVEO.

RECITALS:

- (A) St Vincent's is a hospital established and operated by the Sisters of Charity and conducts itself in accordance with the *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*.
- (B) St Vincent's is the owner of the Licensed Patent Rights.
- (C) AVEO wishes to obtain an exclusive license under the Licensed Patent Rights and certain other Intellectual Property Rights of St Vincent's to Exploit Licensed Therapeutic Products in the Therapeutic Field in the Territory.
- (D) AVEO also wishes to obtain a non-exclusive license under the Licensed Patent Rights and other Intellectual Property Rights of St Vincent's to Exploit Licensed Diagnostic Products in the Diagnostic Field in the Territory.
- (E) St Vincent's agrees to grant and AVEO agrees to accept such licenses on the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this Agreement.

"Accountant" has the meaning given in clause 6.3(a).

"Accounting Standards" means internationally recognized accounting standards (e.g., US Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) as generally and consistently applied by AVEO, its Sublicensees, or their Affiliates, as applicable.

"Affiliate", in relation to a Person, means a Person which Controls, is Controlled by or is under common Control with that Person.

"Agreement" means this agreement, including its Schedules and its Annexure.

"Amendment Effective Date" has the same meaning as the term "Effective Date" in the Amendment Deed between St Vincent's and AVEO dated on or about the date of this Agreement.

"Authorisation" means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by Law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

"AVEO Improvements" means:

- (a) all Improvements made, created, invented or conceived of solely by AVEO, its Affiliates, or their employees or agents after the Effective Date; and
- (b) all Improvements made, created, invented, or conceived of by Third Parties after the Effective Date:
 - (i) the IPRs in which are assigned to or otherwise owned by AVEO or its Affiliates; or
 - (ii) which AVEO or an Affiliate has or acquires a license to Exploit in the Therapeutic Field or the Diagnostic Field.

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia and Boston, Massachusetts, USA.

"Claim", in relation to a Person, means any claim (including a written demand), cause of action, proceeding or suit made against the Person.

"Clinical Trial", in relation to a product, means any experiment, study or test in which the product is administered or dispensed to, or used involving, one or more human subjects.

"Combination Product" means (a) a product that includes, in addition to a Licensed Therapeutic Product, one or more separate pharmaceutically active products which are not, or are not part of, the Licensed Therapeutic Product (and for the purposes of this definition, a pharmaceutically active product does not include something which acts as a stabilizing agent, excipient, adjuvant, delivery vehicle or the like) or (b) a product that includes, in addition to a Licensed Diagnostic Product, one or more separate diagnostic products which are not, or are not part of, the Licensed Diagnostic Product.

"Confidential Information" means:

- (a) in relation to St Vincent's, the Licensed Know How, all St Vincent's Research Tools, all St Vincent's Improvements, all documents, records and reports relating to the Licensed IP, St Vincent's Research Tools or Licensed Products provided by St Vincent's to AVEO under this Agreement and all other information disclosed by St Vincent's to AVEO under or in connection with this Agreement, and the existence and terms of this Agreement, but does not include information which AVEO can establish by written records:
 - (i) was publicly available when it was given to AVEO;
 - (ii) becomes, after being given to AVEO, publicly available, except through disclosure contrary to this Agreement;

- (iii) was in the lawful knowledge and possession of AVEO before it was disclosed to AVEO;
 - (iv) was lawfully received by AVEO from another Person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality; or
 - (v) was independently developed by AVEO without use of or reference to any Confidential Information of St Vincent's; and
- (b) in relation to AVEO, all AVEO Improvements, all documents, records and reports relating to Licensed Products provided by AVEO to St Vincent's under this Agreement and all other information disclosed by AVEO to St Vincent's under or in connection with this Agreement, and the existence and terms of this Agreement, but does not include information referred to in paragraph (a) (other than the existence and terms of this Agreement), or any information which St Vincent's can establish by written records:
- (i) was publicly available when it was given to St Vincent's;
 - (ii) becomes, after being given to St Vincent's, publicly available, except through disclosure contrary to this Agreement;
 - (iii) was in the lawful knowledge and possession of St Vincent's before it was disclosed to St Vincent's;
 - (iv) was lawfully received by St Vincent's from another Person having the unrestricted legal right to disclose that Information without requiring the maintenance of confidentiality; or
 - (v) was independently developed by St Vincent's without use of or reference to any Confidential Information of AVEO.

"Control", in relation to a Person, means the ownership of more than half the issued shares of the Person (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital), ownership of more than half the voting rights attaching to shares in the Person, or the legal power to otherwise direct or cause the direction of the general management and policies of the Person.

"Covered by" means:

- (a) with respect to a claim of an issued patent and a particular product, process or use, that the claim would if valid (and for this purpose, validity is assumed), be infringed by the making, use, supply, sale, hire or other disposal, offer for sale, hire or other disposal or importation of such product, process or use (or product of such process) but for:
 - (i) a license granted in this Agreement; or
 - (ii) any legal exemption to infringement provided for clinical or preclinical use of pharmaceutical products; and
- (b) with respect to a claim of a pending patent application and a particular product, process or use, that the claim, if included in an issued patent rather than in a pending patent application, would if valid (and for this purpose, validity is assumed), be infringed by the making, use, supply, sale, hire or other disposal, offer for sale, hire or other disposal or importation of the product, process or use (or product of such process) but for:
 - (i) a license granted in this Agreement; or

- (ii) any legal exemption to infringement provided for clinical or preclinical use of pharmaceutical products.

"Diagnostic Field" means:

- (a) diagnosis of diseases or conditions characterised by elevated levels of MIC-1, including cachexia, for use in conjunction with a Licensed Therapeutic Product;
- (b) stratification of patients in Clinical Trials of Licensed Therapeutic Products based on MIC-1 levels; or
- (c) determination of appropriate treatment with Licensed Therapeutic Products based on MIC-1 levels.

"Diagnostic License" means the rights and licenses granted in clause 2.2.

"Diagnostic License Commercialisation Income" means that portion of gross income received by or on behalf of AVEO or its Affiliates from any Person fairly in consideration of the Sub-licensing of the Diagnostic License, but does not include income comprising Net Sales of Licensed Diagnostic Products by or on behalf of AVEO or its Affiliates.

"Diligent Efforts", in relation to an obligation or task of a party, means the level of effort required to carry out that obligation or task in a sustained manner consistent with the efforts a reasonable Person in the same position as the party normally devotes to its products at a similar stage of development, based on conditions then prevailing. Diligent Efforts requires that the party:

- (a) promptly assign responsibility for the relevant obligation or task to specific employees who are held accountable for progress, and monitor such progress on an on-going basis;
- (b) set and consistently seek to achieve specific and meaningful objectives for carrying out the obligation or task; and
- (c) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives.

"Disclosing Party", in relation to any information, means the party who disclosed that information to the other party.

"Dispute" has the meaning given in clause 16.1.

"Dispute Notice" has the meaning given in clause 16.2.

"Disruption" means the existence of any of the following that delays or prevents a party from performing an obligation: an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a Government Agency (other than a Government Agency which is charged with, or whose role involves, the administration of any Laws relating to the Authorisation or conduct of Clinical Trials, or the evaluation, assessment or Authorisation of, or reimbursement for, therapeutic or diagnostic products, including the United States Food and Drug Administration and counterparts thereof in other countries), a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of such party, for so long as such condition continues.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"EU5" means France, Germany, Spain, Italy and the United Kingdom.

"Exploit" means:

- (a) in relation to a product, to research, develop, make, have made, use, import, supply, sell, hire or otherwise dispose of, or offer to make, supply, sell, hire or otherwise dispose of the product;
- (b) in relation to a method, process or use, to practice or have practiced or use the method or process or use, or do any act referred to in paragraph (a) with any product of the method or process; and
- (c) to induce another Person to do any action encompassed within paragraph (a) or (b).

"First Commercial Sale", with respect to a Licensed Product in a country, means the first commercial use or sale by AVEO, its Affiliates or any Sub-licensee of the Licensed Product in such country to a Third Party (or manufacture for that purpose), following receipt of marketing approval to sell such Licensed Product in such country, but does not include any transfer or sale at cost or without charge for Clinical Trials, compassionate use, named patient programs, sales under a treatment IND, or any non-registrational studies.

"Force Majeure Event" means the existence of any condition beyond the reasonable control of a party that delays or prevents such party from performing an obligation, including, as applicable, any Disruption.

"Government Agency" means any federal, state or local government, government department or other governmental, semi-governmental or judicial body, including a statutory corporation.

"Improvement", in relation to a Licensed Product or Licensed Process, means an improvement, development, enhancement or modification or new use (including for a new indication) of the Licensed Product or Licensed Process, or of methods for making or using them, which, or the Exploitation of which, is Covered by the Licensed Patent Rights.

"Infringement Claim" means a Claim against any Person for infringement or misappropriation of any Licensed IP in the Therapeutic Field.

"Insolvency Event" means, in respect of a party:

- (a) a bankruptcy administrator or other external administrator being appointed to the party;
- (b)
 - (i) the party resolving to appoint a receiver, receiver and manager or analogous Person to the party or the party's property; or
 - (i) a receiver, receiver and manager, provisional liquidator, trustee for creditors or in bankruptcy or analogous Person is appointed to the party or the party's property;
- (c) the holder of a security interest or any agent on its behalf appointing a receiver, receiver and manager or analogous Person, or taking possession of the party's property;
- (d) the party failing to comply or being taken to have failed to comply with a statutory demand;
- (e) an order being made, or the party passing a resolution, for its winding up or placing of that party into liquidation or bankruptcy;

- (f) the party ceasing to carry on all or a material part of its business, being unable to pay its debts when they are due, or being or becoming otherwise insolvent;
- (g) the party entering into an assignment for the benefit of any of its creditors; or
- (h) any analogous event under the Laws of any applicable jurisdiction,

1 unless this takes place as part of business in the ordinary course, a solvent reconstruction, amalgamation, merger or consolidation, or in the case of any proceeding described above, unless such proceeding is stayed or dismissed within sixty (60) days after it is brought.

"Intellectual Property Rights" (or **"IPR"**) means intellectual property rights, whether conferred by statute, common law, or equity, in relation to inventions or Know How, including copyright, trade secrets (including rights under general law to require that Know How be kept confidential and to control its use), and Patent Rights (including the right to apply for registration of any such rights), but does not include trademark rights.

"Know How" means technical and other information which is not publicly available, including inventions, discoveries, concepts, data, formulae, sequences, sequence data, ideas, specifications, procedures for experiments and tests, results of experimentation and testing, results of research and development (including pre-clinical and clinical research and development) and information in laboratory records, case reports, data analyses and summaries.

"Law" means any law (including subordinate or delegated legislation or statutory instruments of any kind) and any judgment, order, regulation, rule, ordinance, or official directive of any Government Agency or regulatory body, including the SEC and any stock exchange.

"Licensed IP" means:

- (a) the Licensed Patent Rights; and
- (b) the Licensed Know How and the IPR of St Vincent's in the Licensed Know How.

"Licensed Know How" means all Know How owned or controlled solely by St Vincent's at the Effective Date which relates to the use and reduction to practice of the inventions claimed in the Licensed Patent Rights in the Therapeutic Field or the Diagnostic Field and was developed in the laboratory of Samuel N. Breit by Samuel N. Breit or by employees of St Vincent's under his supervision and direction before 1 March 2011.

"Licensed Diagnostic Product" means a diagnostic product, kit, apparatus or substance, which, or the manufacture, importation, supply, sale, hire or other disposal or use of which, is or was at any time during the Term Covered by a Valid Claim of the Licensed Patent Rights anywhere in the Territory.

"Licensed Patent Rights" means all Patent Rights in patent application numbers:

[**],

together with any patent applications anywhere in the Territory claiming priority therefrom or sharing priority therewith and all divisions, continuations, and continuations-in-part or the like thereof, any and all granted or issued patents arising from any of such applications, any and all granted or issued reissues, re-examinations, renewals, extensions, restorations, and supplemental protection certificates (including any form of patent term extensions), including all Patent Rights in the patents and patent applications set out in Schedule 1.

"Licensed Process" means any process, method or use which, or the use of which, is or was at any time during the Term Covered by a Valid Claim of the Licensed Patent Rights anywhere in the Territory.

"Licensed Therapeutic Product" means a therapeutic product, kit, apparatus or substance which, or the manufacture, importation, supply, sale, hire or other disposal, or use of which, is or was at any time during the Term Covered by a Valid Claim of the Licensed Patent Rights anywhere in the Territory.

"Licensed Products" means Licensed Therapeutic Products and Licensed Diagnostic Products.

"Loss" means costs and expenses incurred as a result of or associated with a Claim (including court costs, reasonable legal expenses, reasonable attorney fees and amounts paid in settlement), and damages, compensation, fines, penalties, charges and recoveries awarded or imposed by a Government Agency (including a court) with respect thereto.

"Major Market" means any of the United States, Japan, and each of the EU5.

"MIC-1" means the protein designated pCL13, and variants, fragments and derivatives of pCL13, as described in International Patent Application PCT/AU1996/000386 or the protein and allelic variants encoded by the gene designated GDF15 (growth differentiation factor 15), including the protein designated NCBI Reference Sequence (RefSeq) No. NP_004855.2 and variants, fragments and derivatives of such proteins.

"Milestone Fee" means each fee set out in Schedule 2.

"Milestone" means each milestone set out in Schedule 2.

"Net Sales", in relation to a Licensed Product, means the net sales of the Licensed Product recorded by AVEO, its Affiliates, or any Sub-licensee of AVEO or its Affiliates (each of the foregoing, the **"Seller"**) to a Third Party as determined in accordance with the Seller's Accounting Standards as consistently applied, less a deduction of **[**]**% for direct expenses related to the sales of the Licensed Product, distribution and warehousing expenses and uncollectible amounts on previously sold Licensed Products. The deductions booked on an accrual basis by the Seller or its Affiliates under its Accounting Standards to calculate the recorded net sales of Licensed Products from gross sales of Licensed Products may include the following:

- (a) normal trade and cash discounts;
- (b) amounts repaid or credited by reasons of defects, rejections, recalls or returns;
- (c) rebates and chargebacks to customers and Third Parties (including Medicare, Medicaid, Managed Healthcare and similar types of rebates);
- (d) any amounts recorded in gross revenue associated with goods provided to customers for free;
- (e) amounts provided or credited to customers through coupons and other discount programs;
- (f) delayed ship order credits, discounts or payments related to the impact of price increases between purchase and shipping dates or retroactive price reductions;
- (g) fee for service payments to customers for any non-separable services (including compensation for maintaining agreed inventory levels of Licensed Products and providing information); and

- (h) other reductions or specifically identifiable amounts deducted for reasons similar to those listed above in accordance with the Seller's Accounting Standards (as consistently applied).

With respect to the calculation of Net Sales:

- (a) Net Sales only include the value charged or invoiced on the first arm's length sale to a Third Party and sales between or among the Seller and its Affiliates will be disregarded for purposes of calculating Net Sales;
- (b) if a Licensed Product is delivered to the Third Party before being invoiced (or is not invoiced), Net Sales will be calculated at the time all the revenue recognition criteria under the Seller's Accounting Standards (as consistently applied) are met; and
- (c) for Net Sales of a Combination Product, the Net Sales of the Licensed Product contained in the Combination Product will be determined as follows:
 - (i) If such Licensed Product is a Licensed Therapeutic Product, by multiplying the Net Sales of such Combination Product by the fraction of $A/(A+B)$, where A is the weighted (by sales volume) average sale price in that country of the Licensed Therapeutic Product in the same calendar year when sold separately and B is the weighted average sale price in that country in the same calendar year of the other pharmaceutically active product(s) sold separately. Regarding prices comprised in the weighted average price when sold separately referred to above, if these are available for different dosages from the dosages of Licensed Therapeutic Product and other active ingredient components that are included in the Combination Product, then AVEO will be entitled to make a proportional adjustment to such prices in calculating the royalty-bearing Net Sales of the Combination Product. If neither the Licensed Therapeutic Product nor the other pharmaceutically active product(s) of the Combination Product are sold separately, then the parties shall negotiate in good faith the relative value of the other pharmaceutically active product(s) contained in the Combination Product that is to be deducted from the Net Sales of the Combination Product in determining the Net Sales of the Licensed Therapeutic Product contained in the Combination Product. In this regard, each party's agreement to the relative value must not be unreasonably withheld or delayed, and unless and until the parties reach agreement on the relative value of such other pharmaceutically active product(s), such value will be assumed to be 50% of the selling price of the Combination Product.
 - (ii) If such Licensed Product is a Licensed Diagnostic Product, by multiplying the Net Sales of such Combination Product by the fraction of $A/(A+B)$, where A is the weighted (by sales volume) average sale price in that country of the Licensed Diagnostic Product in the same calendar year when sold separately and B is the weighted average sale price in that country in the same calendar year of the other diagnostic product(s) sold separately. If neither the Licensed Diagnostic Product nor the other diagnostic product(s) of the Combination Product are sold separately, then the parties shall negotiate in good faith the value of the other diagnostic product(s) contained in the Combination Product that is to be deducted from the Net Sales of the Combination Product in determining the Net Sales of the Licensed Diagnostic Product contained in the Combination Product, and unless and until the parties reach agreement on the value of such other diagnostic product(s), such value will be assumed to be 40% of the selling price of the Combination Product.
 - (iii) If the parties do not reach agreement on the value of the other pharmaceutically active product(s) or other diagnostic product(s) contained

in a Combination Product in accordance with subsection (i) or (ii), as applicable, within 30 days after the First Commercial Sale of the Combination Product in the relevant country, then a Dispute Notice shall be deemed to have been given under clause 16.2, and upon resolution of the Dispute, the parties shall make any payments necessary in order to retrospectively adjust the value within 45 days.

"Non-Licensed Product" has the meaning given in clause 3.5(a)(i).

"Patent Rights" means rights with respect to existing and future patents (including any divisions, continuations, continuations in part, renewals, reissues, extensions, supplementary protection certificates, utility models and foreign equivalents of any such patents) and rights with respect to existing and future patent applications and patentable inventions, including the right to apply for registration of any such rights.

"Person" means any natural person, corporation, partnership, limited liability company or other legal entity having the capacity to contract.

"Phase I Clinical Trial" means a Clinical Trial, a purpose of which is a preliminary determination of the safety, metabolism, pharmacological effects, pharmacokinetics, mechanism of action, structure-activity relationships or side effects of a pharmaceutical product in healthy individuals or patients, as further described in 21 CFR § 312.21(a) or foreign counterpart thereto, or a similar Clinical Trial in a country other than the United States.

"Phase II Clinical Trial" means a Clinical Trial, a purpose of which is to evaluate the efficacy of a pharmaceutical product in patients with the disease or condition under study and to determine the common short-term side effects and risks associated with the pharmaceutical product, as further described in 21 CFR § 312.21(b) or foreign counterpart thereto, or a similar Clinical Trial in a country other than the United States.

"Phase III Clinical Trial" means a Clinical Trial, a purpose of which is to obtain, after preliminary evidence suggesting effectiveness of a pharmaceutical product has been obtained, additional information about the safety and efficacy of a pharmaceutical product that is needed to evaluate the overall benefit-risk relationship of the pharmaceutical product and to provide an adequate basis for seeking regulatory approval to market such product for patients with the disease or condition under study, as further described in 21 CFR § 312.21(c) or foreign counterpart thereto, or a similar Clinical Trial in a country other than the United States.

"Quarter" means, in respect of any calendar year, the four quarters of that year, commencing on 1 January, 1 April, 1 July and 1 October of that year.

"Reduced Royalty Product" means a Licensed Product that is: (a) manufactured in a country where its manufacture is not Covered by a Valid Claim in the Licensed Patent Rights and (b) supplied, sold, hired or otherwise disposed of in a country where neither its sale, supply, hire or disposal, nor its use is Covered by a Valid Claim in the Licensed Patent Rights.

"Research Tool License" means the rights and licenses granted in clause 2.3.

"SEC" means the United States Securities and Exchange Commission.

"St Vincent's Research Tools" means the MIC-1 antagonists, reagents and antibodies listed in Schedule 3.

"St Vincent's Improvements" means:

- (a) all Improvements in the Therapeutic Field or the Diagnostic Field made, created, invented or conceived of solely by St Vincent's, its Affiliates, or their employees or agents after the Effective Date; and
- (b) all Improvements in the Therapeutic Field or the Diagnostic Field made, created, invented, or conceived of by Third Parties after the Effective Date:
 - (i) the Patent Rights in which are assigned to or otherwise owned by St Vincent's or its Affiliates; or
 - (ii) which St Vincent's or an Affiliate has or acquires a license to Exploit in the Therapeutic Field or the Diagnostic Field.

"St Vincent's Research Tool IP" means the IPR of St Vincent's in and in relation to the St Vincent's Research Tools.

"Sub-license" in relation to any rights or license ("**licensed rights**"), means: (a) grant to a Third Party any right or license under the licensed rights to Exploit a product, process or use; (b) grant to or confer on a Third Party any option, right of first refusal or right of first negotiation to acquire any right or licence referred to in (a); or (c) enter into any agreement with a Third Party under which any right or option referred to in (a) or (b) is or may be granted.

"Sub-licensee" means: (a) Novartis International Pharmaceutical Ltd and its Affiliates; or (b) any other Person to whom AVEO has sub-licensed the Therapeutic License, Diagnostic License or Research Tool License, and Affiliates and sub-licensees of the foregoing.

"Tax" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by Law or by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

"Term" means the term of this Agreement as determined under clause 15.1.

"Territory" means the world.

"Therapeutic Field" means all human therapeutic, preventative and palliative applications which benefit from inhibition or decreased expression or activity of MIC-1, including from administration of a MIC-1 antagonist or MIC-1 receptor antagonist.

"Therapeutic License" means the rights and licenses granted in clause 2.1.

"Third Party" means any Person other than the parties to this Agreement and their Affiliates.

"Valid Claim" means:

- (a) any claim in a pending patent application included within the Licensed Patent Rights that is being actively prosecuted; or
- (b) any claim in a granted or issued patent included within Licensed Patent Rights,

which, in either case, has not been withdrawn, cancelled or disclaimed, nor held invalid or unenforceable by a court of competent jurisdiction in an unappealed or unappealable decision. If AVEO notifies St Vincent's in writing of its desire that a claim of a pending application in a particular country in the Territory be withdrawn or abandoned, and the claim remains pending as at the later of: (i) [**] years after the Effective Date; or (ii)

10 years after the first substantive office action in relation to the claim, then the pending claim shall cease to be a Valid Claim for the purposes of this definition (but for avoidance of doubt, if and when granted or issued, the claim shall again be a Valid Claim).

1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation or any regulation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Agreement or to any other document or agreement includes a permitted assign of that party;
 - (iv) a clause or Schedule is to a clause or Schedule of this Agreement; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender include the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **"information"** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) A reference to **"USD"** or **"\$"** is to the lawful currency of the United States of America.
- (i) The word **"or"** is used in the inclusive sense (i.e., "and/or").

1.3 Business Days

If the day on or by which a party must do something under this Agreement is not a Business Day the party must do it on or by the next Business Day.

1.4 The rule about "contra proferentem"

This Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision of it or because that party relies on a provision of this Agreement to protect itself.

2. LICENSE GRANTS

2.1 Grant of Therapeutic License

By this Agreement St Vincent's grants to AVEO an exclusive, royalty bearing license under the Licensed IP to:

- (a) Exploit Licensed Therapeutic Products in the Therapeutic Field;
 - (b) practise and have practised Licensed Processes in the Therapeutic Field; and
 - (c) use, reproduce, apply, develop, modify and enhance the Licensed Know How in the Therapeutic Field for the purpose of exercising the rights granted in clauses 2.1(a) and 2.1(b),
- (i) in the Territory, subject to and in accordance with the terms and conditions of this Agreement.

2.2 Grant of Diagnostic License

By this Agreement St Vincent's grants to AVEO a non-exclusive, royalty bearing license under the Licensed IP to:

- (a) Exploit Licensed Diagnostic Products in the Diagnostic Field;
 - (b) practise and have practised Licensed Processes in the Diagnostic Field; and
 - (c) use, reproduce, apply, develop, modify and enhance the Licensed Know How in the Diagnostic Field for the purpose of exercising the rights granted in clauses 2.2(a) and 2.2(b),
- (ii) in the Territory, subject to and in accordance with the terms and conditions of this Agreement.

2.3 Grant of license under St Vincent's Research Tool IP

By this Agreement St Vincent's grants to AVEO a non-exclusive license under the St Vincent's Research Tool IP to research and develop Licensed Therapeutic Products in the Therapeutic Field and Licensed Diagnostic Products in the Diagnostic Field in the Territory, subject to and in accordance with the terms and conditions of this Agreement.

2.4 Nature of licenses

- (a) The licenses granted in clauses 2.1, 2.2 and 2.3 are each separate and distinct licenses in each country of the Territory.
- (b) If all Licensed Patent Rights in any country in the Territory expire, lapse or are revoked during the Term, or no Licensed Patent Rights exist in the country, then subject to clause 15.1, each of the licenses granted in clauses 2.1, 2.2 and 2.3 applies and continues in full force and effect in that country for the Term as a license under the IPR in the Licensed Know How only.

2.5 Affiliates and Sub-licensing

- (a) AVEO may grant to any Affiliate a sub-license under any of the rights and licenses granted to it in clauses 2.1, 2.2 and 2.3, subject to and in accordance with the terms and conditions of this Agreement. For clarity, no such grant to an Affiliate shall be considered a "Sub-license" hereunder.

- (b) Subject to clauses 2.5(c), 2.5(d) and 2.5(e), AVEO may grant Sub-licenses under the Therapeutic License, Diagnostic License and Research Tool License in its discretion and without the further consent of St Vincent's.
- (c) Before granting any Sub-license under the Therapeutic License, Diagnostic License or Research Tool License, AVEO shall:
 - (i) ensure that the terms of the Sub-license agreement are consistent with the terms of this Agreement;
 - (ii) ensure that the Sub-license agreement contains a recital that St Vincent's is a hospital established and operated by the Sisters of Charity and conducts itself in accordance with the *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*;
 - (iii) ensure that the Sub-license agreement contains obligations on the Sub-licensee with respect to confidentiality and security of all Confidential Information of St Vincent's on terms which are no less onerous than the obligations of AVEO under this Agreement; and
 - (iv) ensure that either: (A) the Sub-license agreement is expressed to terminate immediately upon termination of this Agreement; or (B) the Sub-license agreement includes provisions to substantially the same effect as those in Schedule 6.
- (d) AVEO shall provide to St Vincent's a copy of each executed Sub-license agreement within [**] days after its execution. St Vincent's acknowledges that such Sub-licenses may be or may contain Confidential Information of AVEO.
- (e) AVEO remains responsible to St Vincent's for performance of AVEO's obligations under this Agreement and nothing in any Sub-license, nor in this clause 2.5 nor clause 15.8(a), relieves AVEO of its obligations under this Agreement.

2.6 Grant back of rights to St Vincent's

- (a) By this Agreement AVEO grants back to St Vincent's a non-exclusive, royalty-free, perpetual, irrevocable right and license under the Licensed IP to:
 - (i) make, have made and use Licensed Therapeutic Products;
 - (ii) practice and have practised Licensed Processes; and
 - (iii) use, reproduce, apply, develop, modify and enhance the Licensed Know How in the Territory for the purpose of exercising the rights granted back in clauses 2.6(a)(i) and 2.6(a)(ii),
 in the Therapeutic Field in the Territory solely for research purposes.
- (b) Subject to clause 2.6(c), St Vincent's may not grant Sub-licenses under the rights granted back to it in clause 2.6(a) without the consent of AVEO.
- (c) St Vincent's may grant Sub-licenses under the rights granted back to it in clause 2.6(a) to non-commercial (not-for-profit) research collaborators in its discretion and without the further consent of AVEO. For avoidance of doubt, research funded by for-profit entities shall not be considered non-commercial research.

3. DEVELOPMENT AND EXPLOITATION OF LICENSED PRODUCTS

3.1 Technology Transfer

- (a) Within [**] days after the Effective Date, St Vincent's shall deliver to AVEO a package of information comprising the Licensed Know How which is in existence as at the Effective Date.
- (b) Within [**] days after the Effective Date, AVEO shall notify St Vincent's in writing of the items and quantities of St Vincent's Research Tools which AVEO wishes to have delivered to AVEO. Thereafter, from time to time during the Term AVEO may notify St Vincent's in writing of further or additional items and quantities of St Vincent's Research Tools which AVEO wishes to have delivered to AVEO.
- (c) Within [**] days after receipt by St Vincent's of each request referred to in clause 3.1(b), St Vincent's shall provide to AVEO an estimate of the reasonable costs and time for production and delivery of the requested items, for AVEO's written approval.
- (d) Upon receiving AVEO's written approval, St Vincent's shall arrange the production and delivery to AVEO of a package of the agreed items and quantities of St Vincent's Research Tools within the agreed time frame or as soon as reasonably practicable thereafter.
- (e) AVEO shall reimburse St Vincent's within [**] days after delivery to AVEO of the package of St Vincent's Research Tools, the reasonable costs of production and delivery.

3.2 General diligence

- (a) AVEO acknowledges that development and commercial Exploitation of Licensed Therapeutic Products under this Agreement is of the utmost importance to St Vincent's.
- (b) Subject to clause 3.2(c), AVEO shall use Diligent Efforts (whether by itself or through an Affiliate or Sub-licensee):
 - (i) to conduct research and clinical development, and to commercially launch at least one Licensed Therapeutic Product; and
 - (ii) to market, promote, distribute, import, export, offer to sell and sell at least one Licensed Therapeutic Product in each of the Major Markets.
- (c) Clause 3.2(b) shall cease to apply if, and shall not apply only for so long as, there is no Valid Claim in the Licensed Patent Rights anywhere in the Territory that Covers the manufacture, importation, sale, hire or other disposal, supply, practise or use of any therapeutic product, kit, apparatus, substance or method.

3.3 Milestones

- (a) Subject to clauses 3.3(b), 3.9(a)(i), 3.9(a)(ii), 3.9(a)(iii) and 5.2(c), AVEO (whether by itself or through an Affiliate or Sub-licensee) shall meet each Milestone for a first Licensed Therapeutic Product on or before the date set out in Schedule 2 for that Milestone.
- (b) Clause 3.3(a) shall cease to apply if, and shall not apply only for so long as, there is no Valid Claim in the Licensed Patent Rights anywhere in the Territory that Covers the manufacture, importation, sale, hire or other disposal, supply, practise or use of any therapeutic product, kit, apparatus, substance or method.

3.4 **No Exploitation outside the Therapeutic Field and Diagnostic Field**

AVEO shall not, and AVEO shall ensure that its Affiliates and Sub-licensees do not:

- (a) Exploit Licensed Therapeutic Products outside the Therapeutic Field or market, advertise or promote Licensed Therapeutic Products for use outside the Therapeutic Field;
- (b) Exploit Licensed Diagnostic Products outside the Diagnostic Field or market, advertise or promote Licensed Diagnostic Products for use outside the Diagnostic Field;
- (c) Exploit Licensed Processes outside the Therapeutic Field and Diagnostic Field; or
- (d) Exploit St Vincent's Research Tools outside the Therapeutic Field and Diagnostic Field.

3.5 **Alternative products for cachexia, etc.**

- (a) In light of its obligations to St Vincent's in this Agreement, including the obligations in clauses 3.2 and 3.3, AVEO shall not, and AVEO shall ensure that its Affiliates and Sub-licensees do not:
 - (i) develop or commercialise any product, other than a Licensed Therapeutic Product, for the treatment, prevention or prophylaxis of cachexia, decreased appetite or body weight, which binds to MIC-1 or the MIC-1 receptor and is a MIC-1 antagonist (any such product, a "**Non-Licensed Product**"); or
 - (ii) license or induce any other Person to develop or commercialise a Non-Licensed Product, without the prior written consent of St Vincent's.
- (b) Clause 3.5(a) shall cease to apply if, and shall not apply only for so long as, there is no Valid Claim in the Licensed Patent Rights anywhere in the Territory that Covers the manufacture, importation, sale, hire or other disposal, supply, practise or use of any therapeutic product, kit, apparatus, substance or method.

3.6 **Compliance with Laws**

- (a) AVEO shall ensure that all research and development, manufacture, storage and handling of Licensed Products takes place in accordance with applicable Laws, the requirements of any Government Agency and applicable Good Clinical Practise.
- (b) AVEO shall ensure that all Licensed Products Exploited comply with any applicable Laws and requirements of any Government Agency in the countries in the Territory in which they are Exploited, and any applicable codes of Good Manufacturing Practise.

3.7 **Certain restricted activities**

AVEO shall not, and shall ensure that its Affiliates and Sub-licensees do not, Exploit any Licensed Product or Licensed Process for either the deliberate creation of human life by artificial means or the deliberate destruction of human life at any stage of development.

3.8 **Quarterly development reports**

- (a) AVEO shall prepare a report for each Quarter giving details of all material research and development activities for Licensed Products, including:

- (i) the planning and progress of all pre-clinical development (including the progress toward selection of any lead compound for a Licensed Product);
- (ii) the design, purpose, progress and results of all Clinical Trials of Licensed Products and any applications for Authorisations for the conduct of Clinical Trials of Licensed Products;
- (iii) the achievement of any Milestones and steps towards achievement of Milestones; and
- (iv) the filing of all applications for Authorisations for export or marketing of Licensed Products anywhere in the Territory, and the grant of any such Authorisations,

in the relevant Quarter, in the format shown in Annexure 1 or as otherwise agreed by St Vincent's in writing.

- (b) AVEO shall submit each report referred to in clause 3.8(a) to St Vincent's within [**] days after the end of the Quarter to which it relates.

3.9 Adverse events

- (a) AVEO shall notify St Vincent's promptly in writing if:
 - (i) AVEO becomes aware of a Government Agency refusing any Authorisation required to further develop or Exploit a Licensed Product in any country, or orders or requires the termination of any Clinical Trial of a Licensed Product;
 - (ii) AVEO becomes aware of a Government Agency ordering or requiring any warning or withdrawal of a Licensed Product from the market in any country for any health or safety reason;
 - (iii) AVEO becomes aware of a Government Agency granting a Third Party an exclusive legal right, such as an orphan drug designation in a country that precludes the Government Agency from issuing a marketing approval for a Licensed Product for at least [**] years; or
 - (iv) by good faith judgment AVEO or any Sub-licensee decides:
 - (A) to withdraw any Licensed Product from the market for health or safety reasons; or
 - (B) that an event or condition has occurred with respect to a technical issue, including feasibility, CMC, efficacy, safety or toxicology with respect to a Licensed Product that cannot be overcome.
- (b) For avoidance of doubt, clause 3.9(a)(iv) does not require AVEO to report to St Vincent's any adverse events occurring during the course of a Clinical Trial before the Clinical Trial has concluded or is otherwise terminated.
- (c) St Vincent's shall notify AVEO promptly in writing, subject to any confidentiality obligation it may owe to any Third Party, if through its own research in the Therapeutic Field or Diagnostic Field St Vincent's becomes aware of any significant health or safety concern with respect to any Licensed Product.

4. IMPROVEMENTS

4.1 AVEO Improvements

St Vincent's acknowledges that as between the parties, AVEO will be the sole legal and beneficial owner of all IPR in all AVEO Improvements.

4.2 St Vincent's Improvements

- (a) AVEO acknowledges that as between the parties, St Vincent's will be the sole legal and beneficial owner of all IPR in all St Vincent's Improvements.
- (b) Subject to clause 4.2(e), St Vincent's shall not grant to any Person any license under any IPR in St Vincent's Improvements to commercially Exploit the St Vincent's Improvement in the Therapeutic Field, or otherwise deal commercially with such IPR in the Therapeutic Field, without first notifying AVEO in writing, giving details of the relevant St Vincent's Improvement and the relevant IPR (a "**St Vincent's Improvement Notice**").
- (c) If AVEO notifies St Vincent's in writing within [**] days of a St Vincent's Improvement Notice that AVEO wishes to obtain an exclusive license under the relevant IPR to Exploit the relevant St Vincent's Improvement in the Therapeutic Field, then the parties shall negotiate in good faith, for up to 6 months from the date of the St Vincent's Improvement Notice (the "**Negotiation Period**") the terms on which St Vincent's may grant such a license to AVEO.
- (d) If, having received a St Vincent's Improvement Notice:
 - (i) AVEO does not notify St Vincent's in writing within [**] days after receipt of the St Vincent's Improvement Notice that AVEO wishes to obtain an exclusive license under the relevant IPR to Exploit the St Vincent's Improvement in the Therapeutic Field;
 - (ii) AVEO notifies St Vincent's in writing at any time to the effect that AVEO does not wish to obtain an exclusive license under the relevant IPR to Exploit the St Vincent's Improvement in the Therapeutic Field; or
 - (iii) AVEO notifies St Vincent's in writing within [**] days after receipt of the St Vincent's Improvement Notice that AVEO wishes to obtain an exclusive license under the relevant IPR to Exploit the St Vincent's Improvement in the Therapeutic Field, but the parties have not entered into a binding license agreement in which such license is granted before the end of the Negotiation Period,then:
 - (iv) subject to clause 4.2(d)(v), St Vincent's may grant to any Third Party any license under the relevant IPR to Exploit the St Vincent's Improvement in the Therapeutic Field, or otherwise deal with such IPR, in its absolute discretion; but
 - (v) St Vincent's shall not, before the [**] of either the event referred to in paragraph (i), the notice referred to in paragraph (ii) or the expiration of the Negotiation Period, as applicable, grant to any Person a license under the relevant IPR to Exploit the St Vincent's Improvement in the Therapeutic Field on terms more favourable to the Person than those offered to AVEO.

- (e) Nothing in this clause 4.2 prevents St Vincent's from:
- (i) making, having made, practising, having practised or using any St Vincent's Improvement solely for research purposes;
 - (ii) using, reproducing, applying, developing, modifying or enhancing any St Vincent's Improvement solely for research purposes; or
 - (iii) licensing or otherwise permitting non-commercial (not-for-profit) research collaborators to perform the activities in paragraphs (i) and (ii) solely for research purposes, in its discretion and without the further consent of AVEO. For avoidance of doubt, research funded by for-profit entities shall not be considered non-commercial research.

5. LICENSE FEES AND ROYALTIES

5.1 Up-front license fees

In consideration of the licenses granted in clauses 2.1, 2.2 and 2.3, AVEO shall pay to St Vincent's a license fee of USD700,000 in two instalments, being:

- (a) USD400,000, to be paid within 10 Business Days after the Effective Date; and
- (b) USD300,000, to be paid on or before the first anniversary of the Effective Date unless this Agreement is earlier terminated in accordance with clause 15.5(a).

5.2 Milestone Fees

- (a) In further consideration of the licenses granted in clauses 2.1, 2.2 and 2.3, if a Milestone is reached, then AVEO shall pay to St Vincent's the corresponding Milestone Fee, in accordance with this clause 5.2.
- (b) AVEO shall provide to St Vincent's a notice in writing of the occurrence of a Milestone within [**] days after AVEO has knowledge of its occurrence, together with payment to St Vincent's of the relevant Milestone Fee.
- (c) In the event that any Milestone is not achieved in the timeframe set out for that Milestone in Schedule 2, then:
 - (i) AVEO may pay to St Vincent's the Milestone Fee corresponding to the relevant Milestone within [**] days after the expiry of the relevant timeframe; and
 - (ii) if AVEO pays the Milestone Fee corresponding to the relevant Milestone in accordance with clause 5.2(c)(i), then St Vincent's shall have no right to terminate this Agreement based on AVEO's failure to meet that Milestone.
- (d) If AVEO grants a Sub-license under the Diagnostic License to a Third Party to Exploit Licensed Diagnostic Products in the United States, Europe or Japan before the occurrence of the Milestone for the relevant country set out in Part B of Schedule 2, then AVEO shall have no obligation to pay the corresponding Milestone Fee for the relevant country, it being understood and agreed that AVEO's payment of Diagnostic License Commercialisation Income shall be in lieu of such Milestone Fees for such country.

5.3 Royalties on Licensed Therapeutic Products

- (a) In further consideration of the Therapeutic License, AVEO shall pay to St Vincent's royalties on Net Sales of Licensed Therapeutic Products in accordance with this clause 5.3, subject to clauses 5.5 and 5.6.

- (b) While the total Net Sales of Licensed Therapeutic Products in the Territory during the then current calendar year are less than USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are Reduced Royalty Products.
- (c) While the total Net Sales of Licensed Therapeutic Products in the Territory during the then current calendar year are greater than USD[**] but less than USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are Reduced Royalty Products.
- (d) While the total Net Sales of Licensed Therapeutic Products in the Territory during the then current calendar year are greater than USD[**] but less than USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are Reduced Royalty Products.
- (e) On and from the date on which total Net Sales of Licensed Therapeutic Products in the Territory during the then current calendar year exceed USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales of all Licensed Therapeutic Products which are Reduced Royalty Products.

For example, if Net Sales of Licensed Therapeutic Products during a calendar year are USD[**], none of which were Net Sales of Reduced Royalty Products, then the total royalty payable under this clause 5.3 for such calendar year, subject to clauses 5.5 and 5.6, would be calculated as follows: [**].

5.4 **Royalties and Diagnostic License Commercialisation Income**

- (a) In further consideration of the Diagnostic License, AVEO shall pay to St Vincent's:
 - (i) royalties on Net Sales of Licensed Diagnostic Products by or on behalf of AVEO or its Affiliates in accordance with clauses 5.4(c) and 5.4(d); and
 - (ii) [**]% of all Diagnostic License Commercialisation Income.
- (b) For clarity, AVEO shall not be required to pay royalty payments to St Vincent's under clause 5.4(a)(i) on Net Sales of Licensed Diagnostic Products by any Sub-licensee under the Diagnostic License, it being understood and agreed that AVEO's payment of Diagnostic License Commercialisation Income shall be in lieu of such royalties.

- (c) While the total Net Sales of Licensed Diagnostic Products in the Territory during the then current calendar year is less than USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales by or on behalf of AVEO or its Affiliates of all Licensed Diagnostic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales by or on behalf of AVEO or its Affiliates of all Licensed Diagnostic Products which are Reduced Royalty Products.
- (d) On and after the date on which total Net Sales of Licensed Diagnostic Products in the Territory during the then current calendar year exceed USD[**], AVEO shall pay to St Vincent's:
 - (i) a royalty of [**]% of Net Sales by or on behalf of AVEO or its Affiliates of all Licensed Diagnostic Products which are not Reduced Royalty Products; and
 - (ii) a royalty of [**]% of Net Sales by or on behalf of AVEO or its Affiliates of all Licensed Diagnostic Products which are Reduced Royalty Products.

For example, if Net Sales of Licensed Diagnostic Products during a calendar year are USD[**], none of which were Net Sales of Reduced Royalty Products, then the total royalty payable under this clause 5.4 for such calendar year, subject to clause 5.6, would be calculated as follows: [**].

5.5 Duration of royalty obligations

- (a) AVEO's obligation to pay royalties under clauses 5.3 and 5.4 shall, on a country-by-country and Licensed Product-by-Licensed Product basis, run until the later of:
 - (i) the date of expiry, lapse, withdrawal or revocation of the last Valid Claim in the Licensed Patent Rights which Covers the Exploitation of the Licensed Product in such country; or
 - (ii) 10 years from First Commercial Sale of such Licensed Product in such country.
- (b) If the last Valid Claim in the Licensed Patent Rights which would Cover a Licensed Product in a particular country expires, lapses, is withdrawn or revoked before the date which is 10 years from First Commercial Sale of the Licensed Product in such country, then it shall become a Reduced Royalty Product and, subject to clause 5.5(a), the royalties payable on Net Sales of such Licensed Product are reduced in accordance with the applicable subclause (ii) in clause 5.3 or 5.4 (as applicable).
- (c) Upon expiry of all AVEO's obligations under this clause 5 to pay license fees, Milestone Fees, royalties and Diagnostic License Commercialisation Income, AVEO shall have fully paid up, perpetual, irrevocable licenses for all remaining Licensed Know How in existence post expiry of the Licensed Patent Rights.

5.6 Royalty reduction for MIC-1 competition

- If:
- (a) a product which contains or includes a MIC-1 antagonist other than a Licensed Therapeutic Product (a "**MIC-1 Competitor**") is granted a general marketing Authorisation by a Government Agency in the Therapeutic Field in a country in the Territory in which the Licensed Therapeutic Product's Exploitation is not Covered by a Valid Claim in the Licensed Patent Rights, and the MIC-1 Competitor is commercially launched and sold by any Person other than AVEO, its Affiliates or Sub-licensees in that country for use in the Therapeutic Field; and

- (b) AVEO can demonstrate by reference to IMS supported or similar independent data that either:
- (i) the total value of sales by AVEO, its Affiliates or Sub-licensees of Licensed Therapeutic Products in such country have decreased by more than [**]% following the launch of such MIC-1 Competitor; or
 - (ii) the sales of such MIC-1 Competitor in such country has achieved a [**]% market share, either by volume or value, whichever is first to occur,

then as from the first month where either of the criteria in paragraph (b)(i) or (ii) has occurred, the royalty payable by AVEO on Net Sales of that Licensed Therapeutic Product in that country under clause 5.3 shall be reduced by [**]% for as long as the sales of the MIC-1 Competitor continue to have either of the effects referred to in paragraphs (b)(i) and (ii).

5.7 **Payment of royalties and Diagnostic License Commercialisation Income**

- (a) AVEO shall pay to St Vincent's all royalties payable under clauses 5.3 and 5.4 Quarterly in arrears, in accordance with paragraph (b).
- (b) Within [**] days after the end of each Quarter following the First Commercial Sale, AVEO shall provide to St Vincent's a sales and royalty report referred to in clause 6.2. St Vincent's will submit an invoice to AVEO with respect to the royalty amount due to St Vincent's. AVEO shall pay such royalty amount within 30 days after receipt of the invoice.
- (c) AVEO shall notify St Vincent's in writing of the receipt of any Diagnostic License Commercialisation Income within [**] days after its receipt, together with payment to St Vincent's of the amount calculated under clause 5.4(a)(ii).

5.8 **Sub-licensing milestone fee**

AVEO shall pay to St Vincent's a one-time Sub-license milestone fee of USD1,500,000 within twenty-one (21) days after the Amendment Effective Date.

5.9 **How payments shall be made**

All payments to be made under or in connection with this Agreement shall be made in USD by delivering an unendorsed bank cheque to the other party at the place, or by direct transfer of funds to the credit of an account nominated by the other party at least [**] days in advance, and (to the extent permitted by Law) free and clear of, and without deduction or withholding for or on account of any Taxes, except as provided in clause 5.10.

5.10 **Deductions and withholdings**

If at any time an applicable Law obliges AVEO to make a deduction or withholding in respect of any Tax from any payment by AVEO to St Vincent's under this Agreement, AVEO shall:

- (a) notify St Vincent's of the obligation promptly after AVEO becomes aware of it;
- (b) ensure that the deduction or withholding does not exceed the minimum amount required by Law; and
- (c) pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to St Vincent's a copy of any receipt, certificate or other proof of payment.

5.11 Interest on overdue amounts

- (a) AVEO shall pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with paragraph (b). This interest shall be paid on demand.
- (b) Interest on an unpaid amount accrues each day at a rate equal to [**].
- (c) This clause 5.11 does not affect a party's obligation to pay each amount under this Agreement when it is due.

5.12 Currency conversion

- (a) For the purposes of clause 5.9, when conversion of payments from any currency other than USD is required to be undertaken by AVEO or its Sub-licensees, then subject to paragraph (b), the USD equivalent shall be calculated using the then-current standard exchange rate methodology as applied by AVEO or its Sub-licensee (as the case may be) in its external reporting in accordance with its Accounting Standards.
- (b) If there is no standard exchange rate methodology applied by AVEO or its Sub-licensee (as the case may be) in its external reporting in accordance with its Accounting Standards, then any amount in a currency other than USD shall be converted to USD using the exchange rate between those two currencies most recently quoted in the *Wall Street Journal* in New York:
 - (i) as to Net Sales, as of the last Business Day of the Quarter in which the Net Sales were made; and
 - (ii) as to Diagnostic License Commercialisation Income, on the Business Day on which the payment was received by or on behalf of AVEO or its Affiliate, as applicable.

6. REPORTS, RECORDS AND ACCOUNTING

6.1 Books and records

AVEO shall, and shall ensure its Affiliates and Sub-licensees, make, keep and maintain separate and complete records and books of account relating to:

- (a) research and development of Licensed Products (including the achievement of all Milestones), for [**] years after the end of the calendar year to which they relate;
- (b) marketing, advertising and promotion of Licensed Products, for [**] years after the end of the calendar year to which they relate;
- (c) commercial Exploitation of Licensed Products, including the sales of Licensed Products sold, supplied or otherwise disposed of by AVEO, its Affiliates and Sub-licensees of AVEO and its Affiliates, and the deductions made in the calculation of Net Sales, for [**] years after the end of the calendar year to which they relate; and
- (d) any assignment or Sub-licensing of AVEO's rights under this Agreement, including amounts received by or on behalf of AVEO or its Affiliates from any Person in consideration of, as a result of, or in connection with, any assignment, Sub-licensing or other dealing with the Diagnostic License, for [**] years after the end of the calendar year to which they relate,

in accordance with generally accepted accounting principles consistently applied (such as IFRS or US GAAP), which shall contain clear particulars sufficient to enable the calculation of all amounts payable to St Vincent's under clause 5.

6.2 Quarterly statements – following First Commercial Sale

After the date of the First Commercial Sale of a Licensed Product in any country in the Territory, AVEO shall prepare statements for each Quarter showing:

- (a) all Net Sales of each Licensed Product sold, supplied or otherwise disposed of on a country-by-country basis during the reporting period by AVEO, its Affiliates and Sub-licensees (and, to the extent such information is or becomes available to AVEO, the gross sales of each Licensed Product sold, supplied or otherwise disposed of on a country-by-country basis during the reporting period by AVEO, its Affiliates and Sub-licensees, and the deductions made in the calculation of Net Sales), except that:
 - (i) in the case of Licensed Diagnostic Products sold, supplied or otherwise disposed of by Sub-licensees, AVEO shall provide such statements or information in relation to such Licensed Diagnostic Products as is available to AVEO or its Affiliates; and
 - (ii) such statements need not include Licensed Products with respect to which no royalties are payable due to the application of clause 5.5(a);
- (b) details of all Diagnostic License Commercialisation Income received by or on behalf of AVEO and its Affiliates in the period to which the statement relates; and
- (c) the royalties payable, in USD, which will have accrued under this Agreement with respect to such Net Sales,

and shall submit those statements to St Vincent's within [**] days after the end of each Quarter to which they relate.

6.3 Certification

- (a) St Vincent's may give notice to AVEO at any time (but no more than [**]) that it wishes to have any statement submitted by AVEO under clause 6.2 or the amount of any payment(s) made by AVEO audited and certified by one of PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young, KPMG, or an alternative independent accountant reasonably acceptable to AVEO, in either case which is not St Vincent's own regular accountant or auditor (the "**Accountant**") at St Vincent's cost.
- (b) Before inspecting any accounts and records, the Accountant shall provide a written undertaking to AVEO to maintain AVEO's Confidential Information as confidential on terms substantially the same as those in clause 9.
- (c) St Vincent's shall provide to AVEO a copy of its instructions to the Accountant within 7 days of having provided those instructions to the Accountant. AVEO may provide to the Accountant within [**] days thereafter any additional information it wishes to give the Accountant (with a copy to St Vincent's).
- (d) In order that a statement or payment may be certified under paragraph (a), AVEO shall, and shall ensure its Affiliates, within [**] days after receipt of a notice by St Vincent's under clause 6.3(a):
 - (i) grant the Accountant access to all relevant records and books of account during normal business hours to permit the Accountant to inspect them; and

- (ii) permit the Accountant to make such copies of the records and books of account as he or she reasonably requires for the purpose of inspection and certification; and
 - (iii) give the Accountant such assistance as he or she reasonably requires, including by providing access to facilities, hardware, software and documents, to enable the Accountant to verify and independently calculate any amount payable or allegedly payable to St Vincent's under this Agreement.
- (e) As soon as is reasonably practicable upon completion of the inspection, St Vincent's shall cause the Accountant to certify the results of the inspection or verification and provide a copy of the certification to both parties (a "**Certification**").

6.4 Adjustments

- (a) In the absence of manifest error a Certification is final and binding on the parties.
- (b) If a Certification reveals that St Vincent's has not been paid any amount payable to it under this Agreement, then within [**] days after receiving the Certification, AVEO shall pay to St Vincent's the amount of any underpayment, and clause 5.11 applies.
- (c) If a Certification reveals that St Vincent's was underpaid by: (i) [**]% or more of an amount payable to St Vincent's under this Agreement or of the aggregate royalty payable to St Vincent's on Net Sales in any Quarter; or (ii) [**]% of the aggregate royalty payable to St Vincent's on Net Sales in any calendar year, then within [**] days after receiving the Certification, AVEO shall also reimburse St Vincent's all reasonable costs and expenses of the inspection and certification.
- (d) If a Certification reveals that St Vincent's was paid more than the amount payable under this Agreement, then within [**] days after receiving the Certification, St Vincent's shall refund AVEO the amount of the overpayment, less all reasonable costs and expenses of the inspection and certification in the course of which the overpayment was discovered.

7. PROSECUTION AND MAINTENANCE OF PATENT RIGHTS

7.1 Prosecution and maintenance of Licensed Patent Rights

Subject to this clause 7, St Vincent's is and shall remain solely responsible for patent management, filing, prosecution and maintenance in the Territory of all Licensed Patent Rights.

7.2 Obligations to AVEO

St Vincent's shall:

- (a) use diligent efforts to conduct patent management, filing, prosecution and maintenance of the Licensed Patent Rights to the extent permitted by applicable Law;
- (b) keep AVEO reasonably informed of all material developments in the filing, prosecution and maintenance of the Licensed Patent Rights; and
- (c) have reasonable regard to any comments or suggestions by AVEO in relation to filing and prosecution strategies for the Licensed Patent Rights so far as they relate to the Therapeutic Field or the Diagnostic Field.

7.3 Assistance by AVEO

AVEO shall, and shall ensure that its Affiliates and Sub-licensees, promptly provide to St Vincent's all information and documents (including any statements, oaths or statutory declarations) which St Vincent's may reasonably request in order for St Vincent's to make any application for extension of the term of any Licensed Patent Rights (including patent term restoration and supplementary protection certificates).

7.4 Reimbursement by AVEO

- (a) Subject to clause 7.4(b), AVEO shall reimburse St Vincent's for all reasonable costs and expenses incurred by St Vincent's:
- (i) before the Effective Date in patent management, filing, prosecuting and maintaining the division of European Patent Application No. [**] at AVEO's request, in the amount set forth in Schedule 5;
 - (ii) after the Effective Date in patent management, filing, prosecuting and maintaining the Licensed Patent Rights,
- within [**] days after presentation by St Vincent's of invoices for those amounts, together with copies of Third Party invoices, receipts and other documents evidencing those costs.
- (b) AVEO's obligation to reimburse St Vincent's its reasonable costs and expenses incurred in patent management, filing, prosecuting and maintaining the Licensed Patent Rights under which any Third Party is licensed to commercially Exploit any product or process will be reduced [**].
- (c) If St Vincent's enters into any commercial agreement after the Effective Date under which it grants to any Third Party a license under any Licensed Patent Rights to commercially Exploit any product or process, then St Vincent's shall promptly notify AVEO in writing, which writing shall update the number of grants under all other such commercial agreements then in effect.

7.5 Prosecution and maintenance of Patent Rights for Improvements

- (a) AVEO shall have the sole right, but not the obligation, for filing, prosecuting and maintaining any Patent Rights in the Territory in or in relation to any AVEO Improvements, and subject to clause 7.6, AVEO may do so in its sole discretion.
- (b) Subject to any license agreement the parties may enter into under clause 4.2(b), St Vincent's is and shall remain solely responsible for filing, prosecuting and maintaining any Patent Rights in the Territory in or in relation to any St Vincent's Improvements, and may do so in its sole discretion.

7.6 Term extensions in Single Patent Countries

- (a) If AVEO wishes to make any application for extension of the term (including seeking any supplementary protection certificate) of any Patent Rights of AVEO or its Affiliates which Cover Licensed Therapeutic Products (or based on marketing approval of any Licensed Therapeutic Product) in any country in which the term of only one patent may be extended based on the marketing approval of a product (a "**Single Patent Country**"), then AVEO shall notify St Vincent's in writing at least [**] days before making the application, identifying the Patent Rights which AVEO intends to apply to extend.
- (b) If within [**] days of a notice under clause 7.6(a) St Vincent's notifies AVEO in writing of any Licensed Patent Rights eligible for extension which St Vincent's would prefer to have extended (an "**SVH Alternative Patent**"), then:

- (i) AVEO in its discretion may select the Patent Rights it wishes to apply to extend and make the application for term extension; and
- (ii) if AVEO makes an application for extension of any Patent Rights of AVEO and not the SVH Alternative Patent, then royalties shall continue to be payable to St Vincent's under clause 5.3 in the Single Patent Country on Net Sales of the Licensed Therapeutic Product after the expiry of the SVH Alternative Patent, and the Licensed Therapeutic Product shall not become a Reduced Royalty Product (but the applicable royalty rates in clauses 5.3(b)(i), 5.3(c)(i) and 5.3(d)(i) on Net Sales of such Licensed Therapeutic Product in such Single Patent Country shall each reduce by [**]%), for the period for which the term of the SVH Alternative Patent would otherwise have been extended.

7.7 **Common interest**

The parties acknowledge that the exchange of information and documents between them in the course of the prosecution and maintenance of Patent Rights under this clause 7 is pursuant to the common interest of the parties in obtaining advice about the validity and enforceability of the relevant Patent Rights, and obtaining, maintaining and potentially enforcing the relevant Patent Rights.

8. **INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT CLAIMS**

8.1 **Acknowledgments**

- (a) AVEO acknowledges that St Vincent's remains the legal and beneficial owner of the Licensed IP and nothing in this Agreement effects an assignment or transfer to AVEO of any right, title or interest in the Licensed IP.
- (b) AVEO shall not represent that it has any right, title or interest in the Licensed IP other than the rights expressly granted to it under this Agreement.

8.2 **Notification**

Each party shall notify the other party immediately upon becoming aware of:

- (a) any actual or apparent infringement or misappropriation by any Third Party of the Licensed IP in the Therapeutic Field;
- (b) any Claim by any Third Party to the effect that any Licensed IP is invalid or unenforceable; or
- (c) any Claim by any Third Party that the activities of a party under this Agreement infringe the Intellectual Property Rights of any Person.

8.3 **Infringement Claims by AVEO**

- (a) Subject to clauses 8.3(b), 8.3(c) and clause 8.5:
 - (i) in its discretion and at its cost, AVEO may make or commence an Infringement Claim to enforce the Licensed IP against any Person for infringement or misappropriation of the Licensed IP in the Therapeutic Field; and
 - (ii) in the event it does so, AVEO shall have the sole right to conduct and control the Infringement Claim, including the right to settle it.

- (b) If AVEO makes or commences an Infringement Claim, AVEO shall:
 - (i) keep St Vincent's reasonably informed of the progress of the Infringement Claim and all material developments in and in relation to it;
 - (ii) consult in good faith with St Vincent's in making decisions which are material to the conduct or resolution of the Infringement Claim;
 - (iii) have reasonable regard to any comments or suggestions by St Vincent's in the conduct or resolution of the Infringement Claim; and
 - (iv) indemnify and keep indemnified St Vincent's against any reasonable costs incurred by St Vincent's as a result of providing requested assistance to AVEO in relation to the Infringement Claim.
- (c) AVEO shall not:
 - (i) make any admission in or in relation to any Infringement Claim which is adverse to St Vincent's interest in any Licensed IP, including the validity, enforceability or registration of the Licensed IP; or
 - (ii) make any offer of settlement or compromise of any Infringement Claim or agree to settle or compromise any Infringement Claim on terms which involve any admission adverse to, or which compromise or jeopardise the validity, enforceability or registration of any Licensed IP,in each case, without the prior written consent of St Vincent's.
- (d) If AVEO makes or commences an Infringement Claim, then subject to clause 8.3(b), St Vincent's shall, at AVEO's cost, provide to AVEO all reasonable assistance and execute any documents AVEO reasonably requests, in relation to the Infringement Claim.

8.4 Joinder and participation of St Vincent's

If it is necessary that St Vincent's be a party to any Infringement Claim commenced by AVEO, then:

- (a) St Vincent's shall join the Infringement Claim as a plaintiff; and
- (b) St Vincent's hereby waives any objection to being a party to the Infringement Claim, including any objection as to jurisdiction or venue.

8.5 Infringement Claims by St Vincent's

- (a) If AVEO fails to make or prosecute an Infringement Claim in any country in the Territory within [**] days after receipt of a notice by St Vincent's requesting that it do so, then, subject to clauses 8.5(b) and 8.5(c):
 - (i) St Vincent's may in its discretion and at its cost make or prosecute the Infringement Claim itself; and
 - (ii) in the event it does so, St Vincent's shall have the sole right to conduct and control the Infringement Claim, including the right to settle it on such terms as it thinks fit.
- (b) Before St Vincent's makes or prosecutes an Infringement Claim referred to in paragraph (a), St Vincent's shall confer with AVEO and give reasonable consideration to AVEO's reasons for not making or prosecuting the Infringement Claim.

- (c) If St Vincent's makes or commences an Infringement Claim, St Vincent's shall:
 - (i) keep AVEO reasonably informed of the progress of the Infringement Claim and all material developments in and in relation to it;
 - (ii) consult in good faith with AVEO in making decisions which are material to the conduct or resolution of the Infringement Claim so far as they relate to the Therapeutic Field; and
 - (iii) have reasonable regard to any comments or suggestions by AVEO in the conduct or resolution of the Infringement Claim so far as they relate to the Therapeutic Field.
- (d) If St Vincent's makes or commences an Infringement Claim, AVEO shall provide to St Vincent's at AVEO's cost all reasonable assistance, and execute any documents St Vincent's reasonably requests, in relation to the Infringement Claim.

8.6 Joinder and participation of AVEO

If it is necessary that AVEO be a party to any Infringement Claim commenced by St Vincent's, then:

- (a) AVEO shall join the Infringement Claim as a plaintiff; and
- (b) AVEO hereby waives any objection to being a party to the Infringement Claim, including any objection as to jurisdiction or venue.

8.7 Damages and settlement amounts

- (a) If damages, an account of profits or any other amount is awarded to any party in any Infringement Claim referred to in clause 8.3(b), or any amount is received by any party by way of settlement or compromise of an Infringement Claim referred to in clause 8.3(b), then:
 - (i) the parties shall first apply the amount by way of reimbursement of all unreimbursed legal costs of AVEO and St Vincent's (on a pro-rata basis if the amount is insufficient); and
 - (ii) the parties shall allocate any remaining amount between the parties so that St Vincent's is paid or retains [**]% of the net amount and AVEO is paid or retains [**]% of the net amount.
- (b) If damages, an account of profits or any other amount is awarded to any party in any Infringement Claim referred to in clause 8.5, or any amount is received by any party by way of settlement or compromise of an Infringement Claim referred to in clause 8.5, then:
 - (i) the parties shall first apply the amount by way of reimbursement of all unreimbursed legal costs of AVEO and St Vincent's (on a pro-rata basis if the amount is insufficient); and
 - (ii) the parties shall allocate any remaining amount so that St Vincent's is paid or retains [**]% of the net amount.

8.8 Common interest

The parties acknowledge that the exchange of information and documents between them in the course of the making, conduct or resolution of any Infringement Claim under this clause 8 is pursuant to the common interest of the parties in obtaining advice about the

Infringement Claim, the facts giving rise to it or the validity and enforceability of the Licensed Patent Rights, or in anticipation of legal proceedings.

9. **CONFIDENTIAL INFORMATION**

9.1 **Confidentiality**

Subject to clause 9.3, each party shall:

- (a) keep and maintain all Confidential Information of the other party strictly confidential;
- (b) use Confidential Information of the other party only for the purposes for which it is disclosed; and
- (c) not disclose Confidential Information of the other party other than to its or its Affiliates':
 - (i) officers, directors or employees requiring the Confidential Information for the purposes of this Agreement; or
 - (ii) legal and professional advisers, auditors or other consultants, authorised sub-contractors or Sub-licensees requiring the Confidential Information for the purposes of this Agreement upon those entities first undertaking in writing (or having a professional obligation) to keep that Confidential Information confidential on terms substantially the same as those in this clause 9.

9.2 **Security**

For the purposes of clause 9.1, each party shall establish and maintain reasonable security measures no less than the measures maintained for its own Confidential Information, to safeguard the Confidential Information of the other party from unauthorised use or access and shall notify the Disclosing Party immediately upon becoming aware of any suspected or actual unauthorised use or disclosure of the Disclosing Party's Confidential Information.

9.3 **Permitted disclosures**

Notwithstanding clauses 9.1 and 9.2, each party shall be permitted to disclose the Disclosing Party's Confidential Information to the extent that:

- (a) a party is required by applicable Law to disclose any of the Disclosing Party's Confidential Information, provided such party promptly gives notice to the Disclosing Party of that requirement and discloses only that portion of such Confidential Information which it is legally required to disclose;
- (b) disclosure is reasonably necessary under applicable Law to obtain any Authorisation contemplated by this Agreement, including any Authorisation AVEO may be required to obtain to fulfil its obligations under clause 3, provided such party promptly gives notice to the Disclosing Party and discloses only that portion of such Confidential Information which is reasonably necessary to disclose;
- (c) disclosure is reasonably necessary in prosecuting or defending Claims, provided that such party takes all reasonable measures, including seeking protective orders, to minimize unnecessary disclosure of such Confidential Information;
- (d) disclosure is reasonably necessary to (i) prospective and actual licensees, Sub-licensees, distributors, acquirors, bankers, lenders or investors, and (ii) others in order to (and solely to the extent required to) exercise such party's rights or fulfil

its obligations under this Agreement (including commercialization or Sub-licensing of Licensed Patent Rights, Licensed Know How or Licensed Products) on a need to know basis, each of whom in (i) and (ii) prior to disclosure must be bound by similar obligations of confidentiality and non-use on terms substantially the same as those in this clause 9 that are of reasonable duration in view of the circumstances of the disclosure; and

- (e) to the extent mutually agreed to in writing by the parties.

9.4 Publicly available

No piece or body of Confidential Information shall be regarded as publicly available merely because it contains some information which is publicly available or is embraced by a more general disclosure which is publicly available.

9.5 Agreed press releases and announcements

- (a) Neither party shall make or publish any press release or other public announcement of or concerning the existence or terms of this Agreement, other than the press release attached hereto as Schedule 7, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.
- (b) If either party wishes to make or publish any press release or other public announcement referred to in paragraph (a), then:
 - (i) it shall provide to the other party a draft of the proposed publication as soon as is reasonably practicable (and in any event no later than [**] Business Days) before the proposed release or publication date (unless such press release or other public announcement must be released or published in a shorter time frame to comply with any applicable Laws or requirements of any Government Agency);
 - (i) subject to any applicable Laws and the requirements of any Government Agency, the party shall make any amendments to the proposed publication which the other party reasonably requests before the proposed release or publication date;
 - (ii) Either party shall be entitled to redact from any press release or other public announcement that the other party proposes to make any financial information relating to this Agreement; and
 - (iii) Either party shall be entitled to include in any press release or other public announcement that it proposes to make a description of the scope of the license granted to AVEO under this Agreement.
- (c) Notwithstanding clauses 9.5(a) and 9.5(b), a party that is legally required to file a copy of this Agreement with a Government Agency (including the SEC or its counterpart in any country other than the United States) in connection with any public offering of such party's securities or regular reporting obligations as a public company, shall be permitted to do so, provided that such party shall attempt to obtain confidential treatment of all Confidential Information of the other party for which such treatment is reasonably available in accordance with applicable Laws and requirements of the relevant Government Agency. To that end, the filing party shall, at least [**] days in advance of any such filing, provide the other party with a draft set of redactions to this Agreement for which confidential treatment will be sought, incorporate the other party's comments as to additional terms it would like to see redacted, and seek confidential treatment for such additional terms (except only in the limited circumstances where confidential treatment is manifestly unavailable).

10. **PUBLICATIONS**

10.1 **Acknowledgements**

St Vincent's acknowledges AVEO's interest in obtaining valid Patent Rights and in protecting the confidentiality of its Confidential Information. AVEO in turn acknowledges St Vincent's interest in obtaining valid Patent Rights, protecting the confidentiality of its Confidential Information and publishing the results of its research to obtain recognition within the scientific community and to advance the state of scientific knowledge. Accordingly, AVEO must consider in good faith any request by St Vincent's to publish any of the results of St Vincent's research in accordance with this clause 10.

10.2 **Notification of Proposed Publications**

If St Vincent's wishes to submit for publication, publish, present or otherwise make available to any Third Party any information referring or relating to the Licensed Know How in the Therapeutic Field (a "**Proposed Publication**"), St Vincent's shall give written notice to AVEO including:

- (a) a copy of a draft of the Proposed Publication, together with any visual aids; and
- (b) the circumstances of the presentation or publication of the Proposed Publication, including the proposed date.

10.3 **Review of Proposed Publications**

On receipt of a notice under clause 10.2, AVEO must:

- (a) within [**] days in the case of abstracts, oral presentations and poster presentations; or
- (b) within [**] days in the case of publications in peer reviewed journals:
 - (i) review the Proposed Publication and determine whether any step should be taken to protect any Intellectual Property Rights or Confidential Information of AVEO before the Proposed Publication is published or presented, including seeking advice from a patent attorney, filing any patent application or amendment of the Proposed Publication; and
 - (ii) notify St Vincent's of any step AVEO considers should be taken to protect any Intellectual Property Rights or Confidential Information of AVEO before the Proposed Publication is published or presented.

10.4 **Consequences**

If AVEO notifies St Vincent's under clause 10.3 of its view that any step should be taken, then:

- (a) St Vincent's shall not submit for publication, publish, present or otherwise make available to any Third Party the Proposed Publication in the form provided to AVEO until the earlier of [**] days after receipt of AVEO's notice or the date on which all such steps are taken; and
- (b) AVEO shall use its best endeavours to take all such steps promptly and shall notify St Vincent's promptly upon such steps being taken.

11. **REPRESENTATIONS AND WARRANTIES**

11.1 **Representations and warranties by each party**

On the Effective Date each party represents and warrants to the other party that:

- (a) **(status)** it is a company incorporated and validly existing under the Laws of its jurisdiction;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(documents effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally); and
- (f) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the best of its actual knowledge, threatened which, if adversely decided, could have a material adverse effect on its ability to fulfil its obligations under this Agreement; and
- (g) **(no contravention)** neither its execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any agreement binding on it or any of its property; or
 - (iv) contravene its constitution.

11.2 Representations and warranties by St Vincent's

On the Effective Date St Vincent's represents and warrants to AVEO that:

- (a) **(ownership)** St Vincent's is the legal owner of the Licensed Patent Rights (or co-owner with the Garvan Institute of Medical Research ("**Garvan**") with respect to the Licensed Patent Rights listed in Schedule 1 as co-owned by Garvan), including the patents and patent applications set out in Schedule 1, and has the right to grant the full scope of the licenses it grants to AVEO hereunder;
- (b) **(no dealings)** St Vincent's has not transferred, assigned or granted to any Person any right, title or interest in the Licensed IP in the Therapeutic Field or the Diagnostic Field which is inconsistent with the rights granted to AVEO in clause 2.1, 2.2 or 2.3, other than: (i) the rights of inventors to receive a share of licensing income under St Vincent's intellectual property policies; and (ii) the rights of Garvan under the Inter-Institutional Agreement between St Vincent's and Garvan dated 2 May 2011, as amended on 25 June 2012;
- (c) **(filing, prosecution and maintenance)** it has filed, prosecuted and maintained the patent applications listed in Schedule 1, and as at the Effective Date all filing, prosecution and maintenance fees which have become due for payment have been paid;
- (d) **(disclosure)** it has disclosed to AVEO all IPR owned by St Vincent's that, to the best of its knowledge, is necessary to Exploit products and practice processes in the Therapeutic Field or in the Diagnostic Field, for cachexia, decreased appetite or body weight;
- (e) **(duty of candor)** to the best of its knowledge, it has not done or omitted to do anything in its dealings with the US Patent and Trademark Office in the filing and prosecution of the US Patent Rights in the Licensed Patent Rights which is a breach of the duty of candor required by applicable United States Law;
- (f) **(no Claims)** it has not received any written Claim to the effect that any other Person has any legal or beneficial interest in the Licensed IP, and to the best of its knowledge there are no facts or circumstances likely to give rise to any such Claim;
- (g) **(oppositions etc.)** none of the patents or patent applications listed in Schedule 1 is subject to a pending interference action, opposition action, re-examination proceeding, litigation or other similar action by a Third Party challenging such patents or patent applications, other than actions by patent authorities in connection with the prosecution of patent applications;
- (h) **(St Vincent's Research Tools)** Schedule 3 is a complete list of all MIC-1 antagonists, reagents and antibodies owned by St Vincent's that, to the best of the knowledge of [**], (i) were developed in the laboratory of [**] under his supervision before 1 March 2011, (ii) are directly related to the Therapeutic Field or the Diagnostic Field, and (iii) are necessary or useful to AVEO to research and develop Licensed Therapeutic Products in the Therapeutic Field and Licensed Diagnostic Products in the Diagnostic Field in the Territory, on the terms and conditions of this Agreement; and
- (i) **(Patent costs apportionment)** St Vincent's has disclosed to AVEO in writing the Licensed Patent Rights that are licensed to a Third Party to commercially Exploit any product or process as of the Effective Date and the number of such licenses.

11.3 Knowledge of St Vincent's

- (a) In clause 11.2(d), the reference to "**to the best of the knowledge**" of St Vincent's means to the best of the actual knowledge or belief of: (i) [**]; and (ii)

[**] in his capacity as an employee of Australian patent attorneys involved in patent management, filing and prosecution, and maintenance of Licensed Patent Rights.

- (b) In clause 11.2(e), the reference to **"to the best of the knowledge"** of St Vincent's means to the best of the actual knowledge or belief of: (i) [**]; (ii) [**] in his capacity as Australian patent attorney involved in patent management, filing and prosecution, and maintenance of Licensed Patent Rights; (iii) [**] in his capacity as an employee of Australian patent attorneys involved in patent management, filing and prosecution, and maintenance of Licensed Patent Rights; and (iv) [**] in his capacity as US patent counsel involved in patent management, filing and prosecution, and maintenance of the US Patent Rights in the Licensed Patent Rights.
- (c) In clause 11.2(f), the reference to **"to the best of the knowledge"** of St Vincent's means to the best of the actual knowledge or belief of: (i) [**]; and (ii) [**] in his capacity as Australian patent attorney involved in patent management, filing and prosecution, and maintenance of Licensed Patent Rights; and (iii) [**] in his capacity as an employee of Australian patent attorneys involved in patent management, filing and prosecution, and maintenance of Licensed Patent Rights.

11.4 Investigations and Licensed Patent Rights

- (a) AVEO acknowledges that it has had the opportunity to, and has, conducted such investigations as it considers appropriate in relation to the Licensed Patent Rights and the Licensed Know How in existence as at the Effective Date, and has conducted such investigations, including inquiries of St Vincent's, as it has considered necessary.
- (b) Except as set out in clause 11.2, AVEO acknowledges that St Vincent's makes and has made no representation, warranty, statement or promise to the effect:
 - (i) that any patent will be issued or granted in respect of any Licensed IP in any country in the Territory;
 - (ii) that if any patent is granted or issued in respect of any Licensed IP in any country in the Territory, such patent is or will be valid or enforceable; or
 - (iii) that the Exploitation of Licensed Products in any country in the Territory does not or will not infringe the IPR of any Third Party.

11.5 Representation and warranty by AVEO

On the Effective Date AVEO represents and warrants to St Vincent's that: (a) there are no reasonable grounds to believe that in the [**] years following the Effective Date it will not be able to pay its debts as and when they become due and payable; and (b) it does not believe that during the Term it will not be able to pay its debts as and when they become due and payable.

11.6 Exclusion of conditions and warranties

Except for the warranties expressly made in this Agreement, all conditions, warranties, undertakings or representations, express or implied, arising by statute, general law or otherwise are expressly excluded, to the extent permitted by Law.

11.7 Reliance on representations and warranties

Each party acknowledges that the other party has executed this Agreement and agreed to take part in the transactions that this Agreement contemplates in reliance on the representations and warranties that are expressly made in this Agreement.

12. **LIABILITY AND INDEMNITY**

12.1 **Limitation of liability**

- (a) To the extent permitted by Law, the liability of St Vincent's to AVEO under or in connection with this Agreement and the transactions this Agreement contemplates, whether in contract, tort (including negligence and breach of statutory duty) or otherwise is limited to AUD\$10 million.
- (b) The limitation of St Vincent's liability in clause 12.1(a) shall not apply to the extent that the arbitrator holds St Vincent's liable, and awards damages to AVEO, for St Vincent's gross negligence or fraud.

12.2 **Indirect and consequential loss**

Subject to clause 12.3, and to the extent permitted by Law, in no circumstances is either party liable under or in connection with this Agreement or the transactions this Agreement contemplates, whether in contract (including breach of warranty or any other obligation under or in connection with this Agreement), tort (including negligence and breach of statutory duty) or otherwise, to compensate the other party for any special, indirect, incidental, or consequential loss or damage of any nature.

12.3 **Indemnity by AVEO**

- (a) Subject to clause 12.3(b), AVEO shall indemnify and keep indemnified St Vincent's, its Affiliates and its and its Affiliates' directors, officers, employees and agents ("**St Vincent's Indemnitees**") from and against any Loss as a result of or in respect of any Claim which may be brought or commenced by a Person that is not a St Vincent's Indemnitee as a result of or in relation to:
 - (i) a breach by AVEO of any of its representations and warranties or obligations under this Agreement; and
 - (ii) the Exploitation by AVEO or its Affiliates, or any Sub-licensee of AVEO or its Affiliates of Licensed Products;
 - (iii) any sale, supply or other disposal by AVEO or its Affiliates, or any Sub-licensee of AVEO or its Affiliates of Licensed Products;
 - (iv) any personal injury or damage to property caused or allegedly caused by the use of any Licensed Product sold, supplied or otherwise disposed of by AVEO or its Affiliates, or any Sub-licensee of AVEO or its Affiliates; or
 - (v) any failure of AVEO or its Affiliates, or any Sub-licensee of AVEO or its Affiliates or any of their officers, employees, contractors or agents to comply with any applicable Law.
- (b) AVEO's obligation to indemnify St Vincent's Indemnitees in paragraph (a) shall be reduced if, and shall not apply to the extent that, the Loss or Claim was caused by:
 - (i) the gross negligence, unlawful conduct or wilful misconduct by St Vincent's, its Affiliates, its or its Affiliates' directors, employees or agents; or
 - (ii) a breach by St Vincent's of any of its representations, warranties or obligations under this Agreement.
- (c) AVEO agrees that St Vincent's holds the benefit of the indemnity in clause 12.3(a) on trust for the St Vincent's Indemnitees and may enforce the indemnity on their behalf and for their benefit.

- (d) St Vincent's shall provide AVEO with prompt notice of the Claim giving rise to the indemnification obligation pursuant to this clause 12.3 and subject to clause 12.3(e), allow AVEO the exclusive right to defend (with the reasonable cooperation of St Vincent's, at AVEO's expense) or settle such Claim. St Vincent's shall have the right to participate, at its own expense and with counsel of its choice, in the defence of any Claim that has been assumed hereunder by AVEO.
- (e) In conducting and controlling a Claim that has been assumed by AVEO under this clause 12.3, AVEO shall:
 - (i) keep St Vincent's reasonably informed of the progress of the Claim and all material developments in and in relation to it;
 - (ii) consult in good faith with St Vincent's in making decisions which are material to the conduct or resolution of the Claim; and
 - (iii) have reasonable regard to any comments or suggestions by St Vincent's in relation to the conduct or resolution of the Claim.
- (f) AVEO's obligation to indemnify a St Vincent's Indemnitee under clause 12.3(a) shall be reduced to the extent any Loss incurred by the St Vincent's Indemnitee is increased as a result of a failure by St Vincent's to comply with clause 12.3(d).

13. **INSURANCE**

13.1 **AVEO's insurance policies**

AVEO must (and shall ensure its Affiliates) take out Comprehensive General Liability insurance (including Personal & Advertising Injury and Products Liability), in relation to all Licensed Products, consistent with normal business practices of prudent companies similarly situated, to cover its obligations under this Agreement.

13.2 **Name of St Vincent's**

If requested by St Vincent's, AVEO must ensure that St Vincent's is included on the policies referred to in clause 13.1 as a joint insured or loss payee.

13.3 **Certificates of currency**

At the request of St Vincent's from time to time, AVEO shall provide to St Vincent's a certificate of currency or other evidence demonstrating its compliance with its obligations under this clause 13.

13.4 **Expiry**

AVEO shall (and shall ensure its Affiliates) maintain each insurance policy referred to in clause 13.1 until the expiry date of the last Licensed Product supplied, sold or otherwise disposed of by or on behalf of AVEO, its Affiliates or Sub-licensees.

14. **FORCE MAJEURE**

14.1 **Notice and suspension of obligations**

If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party shall immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;

- (iii) the obligations affected by it and the extent of its effect on those obligations; and
- (iv) the steps taken to rectify it; and
- (b) if the Force Majeure Event is a Disruption, then the obligations under this Agreement of the party giving the notice, are suspended to the extent to which they are affected by the relevant Disruption as long as the Disruption continues; and
- (c) if the Force Majeure Event is not a Disruption, then the obligations under this Agreement of the party giving the notice, other than obligations under clause 3.3, are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

14.2 **Effort to overcome**

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

14.3 **Termination**

If a Force Majeure Event continues for more than 4 months, the other party may terminate this Agreement by giving at least 45 days' notice.

15. **TERM AND TERMINATION**

15.1 **Term**

The rights and obligations of the parties under this Agreement begin on the Effective Date, and unless this Agreement is terminated earlier in accordance with this clause 15 or otherwise, end on the later of:

- (a) the date of expiry, lapse, withdrawal or revocation of the last Licensed Patent Right in the Territory to expire, lapse or be withdrawn or revoked; or
- (b) the 10th anniversary of the First Commercial Sale of Licensed Products in the last country in the Territory in which a First Commercial Sale is made (the "**Term**").

15.2 **Termination by either party**

A party may terminate this Agreement:

- (a) immediately by notice to the other party in writing if the other party commits a material breach of its obligations under this Agreement (including failure to make a payment or to meet a Milestone) and fails to remedy that material breach within [**] days after receipt of notice from the other party of the material breach requesting that the material breach be remedied; or
- (b) immediately by notice to the other party in writing if an Insolvency Event occurs in relation to the other party.

15.3 **Insolvency of St Vincent's**

- (a) It is the intention of the parties that:
 - (i) the occurrence of an Insolvency Event in respect of St Vincent's will not, in itself, impact AVEO's rights under this Agreement, nor adversely impact the right of St Vincent's (or its successors or assigns) to receive payments;
 - (ii) upon the occurrence of an Insolvency Event in respect of St Vincent's, AVEO, as a licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections; and
 - (iii) upon the occurrence of an Insolvency Event in respect of St Vincent's, AVEO shall pay to St Vincent's (or its successors or assigns), in accordance with the terms of this Agreement, all Milestone Fees, royalties and other payments which would have been payable to St Vincent's pursuant to this Agreement by AVEO, but for the Insolvency Event.
- (b) The provisions of this clause 15.3 are without prejudice to any rights either party (or their respective successors or assigns) may have arising under any applicable insolvency statute or other applicable Law and are effective only to the extent permitted by applicable Law.

15.4 **Termination by St Vincent's**

- (a) Subject to clause 15.4(b), St Vincent's may terminate this Agreement on 30 days' notice in writing if AVEO or its Affiliates or any Sub-licensee of AVEO or its Affiliates challenges or contests the validity, enforceability or registration of any Licensed Patent Rights (a "**Patent Challenge**"), or causes or induces any other person to make a Patent Challenge.
- (b) If the only Patent Challenge identified in a notice given by St Vincent's under clause 15.4(a) was made, caused or induced by a Sub-licensee (and such Patent Challenge by the Sub-licensee was not itself caused or induced by AVEO), and the Sub-licensee has withdrawn such Patent Challenge before the end of the 30 day notice period, then such notice shall be deemed to have been withdrawn.

15.5 **Termination by AVEO**

- (a) AVEO may terminate this Agreement at any time and for any reason before the first anniversary of the Effective Date, on 60 days' notice in writing.
- (b) Subject to clause 15.5(c), AVEO may terminate this Agreement after the first anniversary of the Effective Date upon no less than 6 months' prior written notice to St Vincent's in the event AVEO terminates its MIC-1 research and development programs:
 - (i) as a result of failure of Licensed Therapeutic Products in pre-clinical or clinical development; or
 - (ii) if AVEO forms the reasonable view that further MIC-1 research and development is not commercially viable.
- (c) Clause 15.5(b) does not apply, and the right referred to in clause 15.5(b) is not exercisable, if AVEO is in breach of any obligation under this Agreement.

15.6 **Lapse, withdrawal etc. of certain Patent Rights**

- (a) Subject to clause 15.6(b), AVEO may terminate this Agreement on 60 days' notice in writing if all Patent Rights in the patent applications set forth in Schedule 4

lapse, are withdrawn, are revoked, cancelled or disclaimed, or held invalid or unenforceable by a court of competent jurisdiction in an unappealed or unappealable decision, before the second anniversary of the Effective Date.

- (b) Clause 15.6(a) does not apply, and the right referred to in clause 15.6(a) is not exercisable, if:
 - (i) AVEO is in material breach of any obligation under this Agreement (including a failure to make a payment); or
 - (ii) AVEO or its Affiliates or any Sub-licensee of AVEO or its Affiliates has challenged or contested the validity, enforceability or registration of any Licensed Patent Rights, or has caused or induced any other person to do so.

15.7 Consequences of termination – default or election by AVEO

- (a) If this Agreement is terminated by AVEO under clause 15.5(b)(ii) before the first Milestone Fee in Part A of Schedule 2 falls due, then AVEO shall pay to St Vincent's the first Milestone Fee in Part A of Schedule 2 on the date of termination.
- (b) If this Agreement is terminated by AVEO under clause 15.5(b)(ii) after the first Milestone Fee in Part A of Schedule 2 has fallen due but before the second Milestone Fee in Part A of Schedule 2 falls due, then AVEO shall pay to St Vincent's the second Milestone Fee in Part A of Schedule 2 on the date of termination.
- (c) If this Agreement is terminated by AVEO under clause 15.5(b) or in its entirety by St Vincent's under clause 15.2 or 15.4, then:
 - (i) by this Agreement AVEO grants to St Vincent's a non-exclusive, perpetual, irrevocable, free license (with the right to Sub-license and grant sub-licenses to Affiliates), under: (a) all IPR in AVEO Improvements, and (b) subject to paragraph (iii), all Know How of AVEO or its Affiliates relating to the research, reduction to practise or development of Licensed Therapeutic Products, Licensed Diagnostic Products and Licensed Processes, to:
 - (A) Exploit Licensed Therapeutic Products and Licensed Diagnostic Products in the Territory; and
 - (B) practice or have practiced Licensed Processes in the Therapeutic Field and the Diagnostic Field in the Territory;
 - (ii) AVEO shall deliver to St Vincent's within [**] days after the date of termination, all information comprising the AVEO Improvements and Know How referred to in paragraph (i); and
 - (iii) the license in paragraph (i) does not include a license under the Know How of an Affiliate of AVEO which Controls AVEO, which Know How was created before the date on which such Affiliate became an Affiliate of AVEO.

15.8 Sub-licensees in good standing

- (iii) If:
 - (a) this Agreement is terminated: (i) in its entirety by St Vincent's under clause 15.2(a); or (ii) in part by St Vincent's under clause 15.11, for failure by AVEO to make a payment under this Agreement;
 - (b) before the date on which notice of termination was given under clause 15.2(a) AVEO had granted a Sub-license which complies with clause 2.5(c) and includes provisions to substantially the same effect as those set out in Schedule 6 (an

"Eligible Sub-license") which terminates, or terminates in part, as a result of the termination referred to in paragraph (a);

- (c) the Sub-licensee under the Eligible Sub-license: (i) is not and was not in material breach of any obligation in the Sub-license agreement; and (ii) did not contribute by any act or omission to the events that led to such termination (or partial termination) and is and was otherwise in good standing under the Sub-license agreement; and (iii) has not challenged or contested the validity, enforceability or registration of any Licensed Patent Rights, or caused or induced any other person to do so; and
- (d) within [**] days of the date of termination of this Agreement (or partial termination) the Sub-licensee: (i) notifies St Vincent's in writing of its desire to become a direct licensee of St Vincent's on the terms and conditions of the Eligible Sub-license; and (ii) pays to St Vincent's all amounts which became due and payable by AVEO under this Agreement but which were unpaid as of the date of termination of this Agreement (or partial termination),

then St Vincent's shall not unreasonably withhold its consent to entering into a new license agreement with such Sub-licensee on the terms and conditions of the Eligible Sub-license, insofar as it relates to a Sub-license under the Therapeutic License or Diagnostic License, on terms that: (i) the Sub-licensee is a direct licensee of St Vincent's under the Licensed IP rather than AVEO; (ii) all obligations owed by the Sub-licensee to AVEO under the Eligible Sub-license are owed to St Vincent's; and (iii) the Sub-licensee indemnifies and keeps indemnified St Vincent's, its Affiliates and its and its Affiliates' directors, officers, employees and agents from any Claim, and against any Loss as a result of or in respect of any Claim, which may be brought or commenced by the Sub-licensee, its Affiliates or any Person claiming by or through the Sub-licensee or its Affiliates in respect of any breach by AVEO of the Eligible Sub-license or any of its representations, warranties or obligations under it.

15.9 Regulatory approvals

If this Agreement is terminated by St Vincent's, or by AVEO under clause 15.5(b), then within [**] days after the date of termination, AVEO shall, and shall ensure that its Affiliates:

- (a) transfer to St Vincent's or its nominee all Authorisations held by it or its Affiliates to commercially Exploit Licensed Products in any country in the Territory;
- (b) to the extent any Authorisation referred to in paragraph (a) is not transferrable or assignable under the laws of any jurisdiction, hold the benefit of the Authorisation on trust for St Vincent's or its nominee; and
- (c) deliver to St Vincent's or its nominee copies of all documents (in any form or media) held by AVEO or its Affiliates in relation to each Authorisation referred to in paragraph (a), including all files and dossiers held during the Term in order to comply with any applicable Laws or requirements of any Government Agency.

15.10 Return or destruction of Confidential Information

- (a) Subject to clauses 15.10(b), within [**] days after termination of this Agreement:
 - (i) St Vincent's shall return to AVEO or destroy at AVEO's election all Confidential Information of AVEO in the possession, custody or power of St Vincent's or any of its Affiliates, other than the information referred to in clause 15.7(c), if applicable; and
 - (ii) AVEO shall return to St Vincent's or destroy at St Vincent's election all Confidential Information of St Vincent's, all Licensed Know How and all St

Vincent's Research Tools in the possession, custody or power of AVEO or any of its Affiliates and Sub-licensees.

- (b) Each party may retain in its legal department a single copy of the Confidential Information of the other party the purpose of for record keeping and to fulfil the requirements of any applicable Laws.

15.11 Alternatives to termination

If St Vincent's has a right to terminate this Agreement under clause 14.3, 15.2(a) or 15.4, then in addition to any other rights St Vincent's may have and subject to clause 15.12, St Vincent's may in its discretion:

- (a) terminate this Agreement as to any particular country, state or territory in the Territory;
- (b) terminate this Agreement as to a particular Licensed Product;
- (c) terminate this Agreement as to a particular Licensed Process;
- (d) terminate this Agreement as to certain parts of the Therapeutic Field or the Diagnostic Field;
- (e) terminate this Agreement as to particular Licensed IP; or
- (f) by notice in writing convert the Therapeutic License to a non-exclusive license as a whole or:
 - (i) as to any particular country, state or territory in the Territory;
 - (ii) as to a particular Licensed Therapeutic Product;
 - (iii) as to a particular Licensed Process;
 - (iv) as to certain parts of the Therapeutic Field; or
 - (v) as to particular Licensed IP.

15.12 Restrictions on partial termination

If St Vincent's exercises its rights under clause 15.11 to partially terminate rights granted under this Agreement, then it shall do so with respect to the applicable country, state or territory in the Territory, Licensed Product, Licensed Process, portion of the Therapeutic Field or Diagnostic Field, or Licensed IP in relation to which St Vincent's right to terminate this Agreement arose. For example, if St Vincent's exercises its rights under clause 15.11 to partially terminate rights granted under this Agreement as a result of an uncured material breach by AVEO of its obligation to achieve the Milestone for Marketing Approval for a Licensed Diagnostic Product in Japan, St Vincent's may do so with respect to Japan or with respect to Licensed Diagnostic Products, but not with respect to the US (and not Japan) or with respect to Licensed Therapeutic Products (and not Licensed Diagnostic Products).

15.13 Survival and accrued rights

Upon termination under this clause 15 or otherwise, this Agreement is at an end as to its future operation except for:

- (a) the enforcement of any right or Claim which arises on or has arisen before termination; and

- (b) the rights and obligations of the parties under clauses 1, 6.1, 6.3, 6.4, clauses 8.3(b), 8.3(c) and 8.7 (with respect to any Infringement Claim commenced before the date of termination), and clauses 9, 12, 13, 15, 16, 17 and 19, which survive termination in accordance with their terms; and
- (c) the rights and obligations of the parties under clause 5 and clause 6.3 with respect to:
 - (i) any Milestone occurring before the date of termination;
 - (ii) any Net Sales of Licensed Products before the date of termination; and
 - (iii) any Diagnostic License Commercialisation Income derived from any relevant assignment, Sub-licensing or other dealing before the date of termination.

16. DISPUTE RESOLUTION

16.1 Disputes

If a dispute arises out of or in relation to this Agreement (including any dispute as to breach or termination of this Agreement) (a "**Dispute**"), the Dispute must be determined in accordance with the procedure in this clause 16, and a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause 16, except that a party may seek urgent interlocutory or injunctive relief from any court having competent jurisdiction.

16.2 Notice of Dispute

A party claiming that a Dispute has arisen shall give written notice to the other party specifying the nature of the Dispute (a "**Dispute Notice**").

16.3 Negotiation

Within [**] days of the receipt by a party of a Dispute Notice, St Vincent's and AVEO shall procure that their respective Chief Executive Officers meet at least [**] (either in person, by webcast or via teleconference) to endeavour to resolve the Dispute expeditiously by negotiation. The parties must not delegate the function of the Chief Executive Officers to any other person, and each party warrants that its Chief Executive Officer has full authority to resolve any Dispute.

16.4 Resolution of Dispute

If the parties have not resolved the Dispute within [**] days after receipt of a Dispute Notice, if requested by a party the parties shall negotiate whether to use informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by the parties.

16.5 Arbitration

- (a) If the parties have not resolved the Dispute within [**] days after receipt of a Dispute Notice (or such further period as the parties agree in writing), then the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**"), by one or more arbitrators appointed in accordance with those Rules, which Rules are deemed to be incorporated by reference into this clause 16.5.
- (b) The seat of the arbitration shall be Singapore and the language of the arbitration shall be English.

17. **NOTICES**

17.1 **Notices**

- (a) Any notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or electronic form such as email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, five Business Days after it is posted; and
 - (iii) if it is sent by fax or in electronic form, when the addressee actually receives it in full and in legible form.

17.2 **Addresses for notices**

A party's address and fax number are those set out below, or as the party notifies the other party:

St Vincent's

Address: Level 4, 406 Victoria Street, Darlinghurst, NSW 2010,
Australia

Fax number: +61 2 8382 7172

Attention: Chief Executive Officer

With a copy to:

Executive Office

Address: Level 3 deLacy Building, St Vincent's Hospital, Victoria Street, Darlinghurst NSW 2010, Australia

Fax number: +61 (0)2 8382 2494

Attention: Executive Director, St Vincent's Public Health Services

With a copy to:

Address: Level 8 Lowy Packer Building, St Vincent's Hospital, 405 Liverpool Street, Darlinghurst NSW 2010, Australia

Fax number: +61 (0)2 8382 4965

Attention: Professor Samuel N Breit, Professor of Medicine and Director of Immunopathology and Head, Cytokine Biology and Inflammation Research Group, St Vincent's Centre for Applied Medical Research

AVEO

AVEO Pharmaceuticals, Inc.

Address: One Broadway, 14th Floor, Cambridge, MA 02142 USA

Fax number: +1 617 621 1406

Attention: Vice President, Corporate Development and Alliance Management

With a copy to:

AVEO Pharmaceuticals, Inc.

Address: One Broadway, 14th Floor, Cambridge, MA 02142 USA

Fax number: +1 617 699 2394

Attention: Senior Corporate Counsel

18. **AMENDMENT AND ASSIGNMENT**

18.1 **Amendment**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by both parties.

18.2 **Assignment**

- (a) Subject to clause 18.2(b), a party may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with the prior written consent of the other party.
- (b) A party may assign its rights under this Agreement to another Person in connection with a merger or transaction under which all or substantially all of a party's business or assets are acquired by that other Person, without the consent of the other party.

19. **GENERAL**

19.1 **Governing law**

- (a) This Agreement is governed by the laws of New South Wales, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia, and the state and U.S. courts located in the Commonwealth of Massachusetts, USA, and any court that may hear appeals from any of those courts, for any proceedings seeking urgent interlocutory or injunctive relief in connection with this Agreement.
- (c) Each party irrevocably waives:
 - (i) any objection to the venue of any proceedings seeking urgent interlocutory or injunctive relief on the ground that they have been brought in an inconvenient forum; and
 - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable Law.

19.2 **Liability for expenses**

Each party shall pay its own expenses incurred in negotiating and executing this Agreement.

19.3 **Relationship of the parties**

Nothing in this Agreement creates a relationship of employment, partnership or joint venture between the parties under the Laws of any applicable jurisdiction and no party may act or has the authority to act as agent of or in any way bind or commit another party to any obligation.

19.4 **Giving effect to this Agreement**

Each party shall take such actions and execute such documents as may be reasonably necessary to implement the provisions of this Agreement and to accomplish the purposes of this Agreement and the transactions set forth in this Agreement.

19.5 Variation of rights

The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or variation of the terms of this Agreement.

19.6 Operation of this Agreement

- (a) Subject to paragraph (b), this Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a Person may have under this Agreement is in addition to, and does not replace or limit, any other right that the Person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

19.7 Counterparts

This Agreement may be executed in counterparts. Delivery of a counterpart of this Agreement by email attachment or fax constitutes an effective mode of delivery.

EXECUTED as an agreement as of the Amendment Effective Date

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED for **ST VINCENT'S HOSPITAL SYDNEY LIMITED**, by its duly authorised officer:

/s/ Robert Beetson

Signature of officer

Robert Beetson

Name

SIGNED for **AVEO Pharmaceuticals, Inc.**, by its duly authorised officer:

/s/ Michael P. Bailey

Signature of officer

/s/ Michael P. Bailey

Name

CERTIFICATION

I, Michael Bailey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AVEO Pharmaceuticals, 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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2021

/s/ Michael Bailey

Michael Bailey

Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Erick Lucera, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AVEO Pharmaceuticals, 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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2021

/s/ Erick Lucera

Erick Lucera

Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of AVEO Pharmaceuticals, Inc. (the "Company") for the fiscal quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Michael Bailey, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge on the date hereof:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 8, 2021

/s/ Michael Bailey

Michael Bailey

Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of AVEO Pharmaceuticals, Inc. (the "Company") for the fiscal quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Erick Lucera, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge on the date hereof:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 8, 2021

/s/ Erick Lucera

Erick Lucera

Chief Financial Officer
(Principal Financial Officer)