

# INTERCEPT PHARMACEUTICALS INC

## FORM 10-K (Annual Report)

Filed 03/01/17 for the Period Ending 12/31/16

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Telephone	646-747-1000
CIK	0001270073
Symbol	ICPT
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

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FORM 10-K

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(Mark One)

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

For the fiscal year ended December 31, 2016

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: 001-35668

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**Intercept Pharmaceuticals, Inc.**

(Exact Name of Registrant as Specified in its Charter)

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**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**22-3868459**

(I.R.S. Employer  
Identification No.)

**450 West 15<sup>th</sup> Street, Suite 505**  
**New York, NY**

(Address of Principal Executive Offices)

**10011**

(Zip Code)

**(646) 747-1000**

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Name of each exchange on which registered
<b>Common Stock, \$0.001 par value</b>	<b>NASDAQ Global Select Market</b>

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities

Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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

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

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

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant (without admitting that any person whose shares are not included in such calculation is an affiliate) computed by reference to the price at which the common stock was last sold on June 30, 2016 was approximately \$3,520,761,550. As of January 31, 2017 there were 24,831,471 shares of common stock, \$0.001 par value per share, outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a definitive proxy statement pursuant to Regulation 14A in connection with its 2017 Annual Meeting of Stockholders. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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[TABLE OF CONTENTS](#)

TABLE OF CONTENTS

	<u>Page</u>
<b>Part I.</b>	
<a href="#">Item 1. Business</a>	<a href="#">1</a>
<a href="#">Item 1A. Risk Factors</a>	<a href="#">33</a>
<a href="#">Item 1B. Unresolved Staff Comments</a>	<a href="#">74</a>
<a href="#">Item 2. Properties</a>	<a href="#">74</a>
<a href="#">Item 3. Legal Proceedings</a>	<a href="#">74</a>
<a href="#">Item 4. Mine Safety Disclosures</a>	<a href="#">74</a>
<b>Part II.</b>	
<a href="#">Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	<a href="#">75</a>
<a href="#">Item 6. Selected Financial Data</a>	<a href="#">77</a>
<a href="#">Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	<a href="#">78</a>
<a href="#">Item 7A. Quantitative and Qualitative Disclosures About Market Risk</a>	<a href="#">92</a>
<a href="#">Item 8. Financial Statements and Supplementary Data</a>	<a href="#">92</a>
<a href="#">Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	<a href="#">92</a>
<a href="#">Item 9A. Controls and Procedures</a>	<a href="#">92</a>
<a href="#">Item 9B. Other Information</a>	<a href="#">93</a>
<b>Part III.</b>	
<a href="#">Item 10. Directors, Executive Officers and Corporate Governance</a>	<a href="#">94</a>
<a href="#">Item 11. Executive Compensation</a>	<a href="#">94</a>
<a href="#">Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	<a href="#">94</a>
<a href="#">Item 13. Certain Relationships and Related Transactions, and Director Independence</a>	<a href="#">94</a>
<a href="#">Item 14. Principal Accounting Fees and Services</a>	<a href="#">94</a>
<b>Part IV.</b>	
<a href="#">Item 15. Exhibits and Financial Statement Schedules</a>	<a href="#">94</a>
<a href="#">Item 16. Form 10-K Summary</a>	<a href="#">94</a>
<a href="#">Signatures</a>	<a href="#">95</a>

### Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including statements regarding our strategy, future operations, future financial position, future revenue, projected costs, prospects, plans, objectives of management and expected market growth, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

The words “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “target,” “potential,” “will,” “would,” “could,” “should,” “continue,” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements include, among other things, statements about:

- our ability to successfully commercialize Ocaliva® (obeticholic acid, or OCA) in primary biliary cholangitis, or PBC, and our ability to maintain our regulatory approval of Ocaliva in PBC in the United States, Europe and other jurisdictions in which we may receive marketing authorization;
- the initiation, cost, timing, progress and results of our development activities, preclinical studies and clinical trials;
- the timing of and our ability to obtain regulatory approval of OCA in indications other than PBC and regulatory approval of any other product candidates we may develop such as INT-767;
- conditions that may be imposed by regulatory authorities on our marketing approvals for our products and product candidates, such as the need for clinical outcomes data (and not just results based on achievement of a surrogate endpoint), and any related restrictions, limitations and/or warnings in the label of any products or product candidates;
- our plans to research, develop and commercialize our products and product candidates;
- our ability to obtain and maintain intellectual property protection for our products and product candidates;
- our ability to successfully commercialize our products and product candidates;
- the size and growth of the markets for our products and product candidates and our ability to serve those markets;
- the rate and degree of market acceptance of any products, which may be affected by the reimbursement received from payors;
- the success of competing drugs that are or become available;
- regulatory developments in the United States and other countries;
- the performance of our third-party suppliers and manufacturers;
- our collaborators’ election to pursue research, development and commercialization activities;
- our ability to attract collaborators with development, regulatory and commercialization expertise;
- our need for and ability to obtain additional financing;
- our estimates regarding expenses, revenues and capital requirements and the accuracy thereof;
- our use of cash and short term investments; and
- our ability to attract and retain key scientific or management personnel.

These forward-looking statements are only predictions and we may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, so you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have based these forward-looking

## TABLE OF CONTENTS

statements largely on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. We have included important factors in the cautionary statements included in this Annual Report on Form 10-K, particularly in Item 1.A. Risk Factors, that could cause actual future results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

You should read this Annual Report on Form 10-K and the documents that we have filed as exhibits to this Annual Report on Form 10-K with the understanding that our actual future results may be materially different from what we expect. We do not assume any obligation to update any forward-looking statements whether as a result of new information, future events or otherwise, except as required by applicable law.

### **Non-GAAP Financial Measures**

This Annual Report on Form 10-K presents projected adjusted operating expense, which is a financial measure not calculated in accordance with U.S. generally accepted accounting principles, or GAAP, and should be considered in addition to, but not as a substitute for, operating expense that we prepare and announce in accordance with GAAP. We exclude certain items from adjusted operating expense, such as stock-based compensation and other non-cash items, that management does not believe affect our basic operations and that do not meet the GAAP definition of unusual or non-recurring items. For the year ended December 31, 2016, adjusted operating expense also excludes a one-time \$45 million net expense for the settlement of a purported class action lawsuit. Other than the net class action lawsuit settlement amount, which is a one-time expense, we anticipate that stock-based compensation expense will represent the most significant non-cash item that is excluded in adjusted operating expenses as compared to operating expenses under GAAP. A reconciliation of projected non-GAAP adjusted operating expense to operating expense calculated in accordance with GAAP is not available on a forward-looking basis without unreasonable effort due to an inability to make accurate projections and estimates related to certain information needed to calculate, for example, future stock-based compensation expense. Management also uses adjusted operating expense to establish budgets and operational goals and to manage our company's business. Other companies may define this measure in different ways. We believe this presentation provides investors and management with supplemental information relating to operating performance and trends that facilitate comparisons between periods and with respect to projected information.

### **Note Regarding Trademarks**

The Intercept Pharmaceuticals® name and logo and the Ocaliva® name and logo are either registered or unregistered trademarks or trade names of Intercept Pharmaceuticals, Inc. in the United States and/or other countries. All other trademarks, service marks or other tradenames appearing in this Annual Report on Form 10-K are the property of their respective owners.

## TABLE OF CONTENTS

### Part I

*All brand names or trademarks appearing in this Annual Report on Form 10-K are the property of their respective holders. Unless the context requires otherwise, references in this Annual Report on Form 10-K to "Intercept," the "Company," "we," "us," and "our" refer to Intercept Pharmaceuticals, Inc. and its consolidated subsidiaries.*

#### Item 1. Business

##### Overview

We are a biopharmaceutical company focused on the development and commercialization of novel therapeutics to treat non-viral, progressive liver diseases with high unmet medical need utilizing our proprietary bile acid chemistry. Our marketed product and clinical product candidates have the potential to treat orphan and more prevalent liver diseases for which, currently, there are limited therapeutic solutions.

Our lead product candidate, obeticholic acid, or OCA, is a bile acid analog, a chemical substance that has a structure based on a naturally occurring human bile acid, that selectively binds to and activates the farnesoid X receptor, or FXR. We believe OCA has broad liver-protective properties and may effectively counter a variety of chronic insults to the liver that cause fibrosis, or scarring, which can eventually lead to cirrhosis, liver transplant and death.

OCA was approved in the United States in May 2016 for use in patients with primary biliary cholangitis, or PBC, under the brand name Ocaliva®. We commenced sales and marketing of Ocaliva in the United States shortly after receiving such marketing approval, and Ocaliva is now available to patients primarily through a network of specialty pharmacy distributors. In December 2016, the European Commission granted conditional approval for Ocaliva for the treatment of PBC and we commenced our European commercial launch in January 2017. We have also filed for regulatory approval for OCA in PBC in Canada and plan to file for marketing authorization in other target markets.

OCA is also being developed to treat a variety of other non-viral progressive liver diseases such as nonalcoholic steatohepatitis, or NASH, primary sclerosing cholangitis, or PSC, and biliary atresia. We are currently evaluating our future development strategy for OCA in other indications, for our product candidate INT-767 and for our pre-clinical candidates.

OCA has been tested in five placebo-controlled clinical trials, including a Phase 3 clinical trial in patients with PBC and two Phase 2 clinical trials in patients with NASH or a precursor disease to NASH known as nonalcoholic fatty liver disease, or NAFLD. OCA met the primary efficacy endpoint in each of these trials with statistical significance. In addition, in October 2015, we announced results from a Phase 2 dose ranging trial of OCA in 200 patients with NASH in Japan conducted by our collaborator, Sumitomo Dainippon Pharma Co., Ltd., or Sumitomo Dainippon. The results of this trial were mixed. Sumitomo Dainippon has informed us that it is exploring the initiation of its registrational trials for OCA in NASH patients intended to support the registration of this indication in Japan.

OCA has received orphan drug designation in the United States and the European Union for the treatment of PBC and PSC and breakthrough therapy designation from the U.S. Food and Drug Administration, or FDA, for the treatment of NASH patients with liver fibrosis.

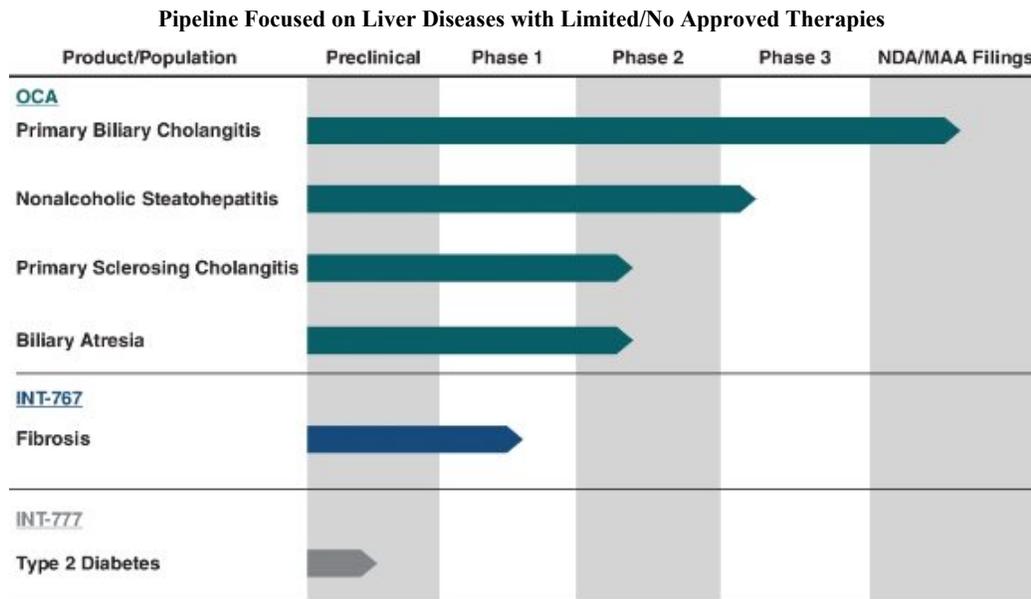
OCA achieved the primary endpoint in a Phase 2b clinical trial for the treatment of NASH, known as the FLINT trial, which was sponsored by the U.S. National Institute of Diabetes and Digestive and Kidney Diseases, or NIDDK, a part of the National Institutes of Health. The FLINT trial was completed in late July 2014. We have an ongoing Phase 3 clinical trial in non-cirrhotic NASH patients with liver fibrosis, known as the REGENERATE trial. REGENERATE includes a pre-planned histology-based interim analysis after 72 weeks of treatment. We are targeting completion of enrollment of the cohort of patients needed for this analysis by mid-2017, with results from the interim analysis anticipated in 2019. We also have an ongoing Phase 2 clinical trial, known as the CONTROL trial, to characterize the lipid metabolic effects of OCA and cholesterol management effects of concomitant statin administration in NASH patients. We completed enrollment of the targeted number of patients for our CONTROL trial in October 2016 and expect top-line

[TABLE OF CONTENTS](#)

results in 2017. We continue to work towards expanding our overall NASH development program with additional trials and studies, including a Phase 3 trial in NASH patients with cirrhosis, which we expect to initiate in 2017.

In addition to PBC and NASH, we continue to invest in research of OCA for additional patient populations with other liver diseases. In September 2016, we completed enrollment of the targeted number of patients in our Phase 2 AESOP trial in PSC to evaluate the effects of 24 weeks of treatment with varying doses of OCA compared to placebo. We expect top-line results from the AESOP trial in 2017. In October 2015, we initiated a Phase 2 clinical trial, known as the CARE trial, of OCA in pediatric patients with biliary atresia. This trial will evaluate the effects of 11 weeks of OCA treatment where patients with biliary atresia are randomized to varying doses of OCA or a control group receiving only their current treatment. As part of our development program, we completed a Phase 1 clinical trial of our second product candidate to enter clinical development, called INT-767, a dual FXR and TGR5 agonist, in healthy volunteers. Following analysis of the results, we plan to evaluate next steps for a Phase 2 trial of INT-767 in NASH patients with liver fibrosis in 2017.

The following chart shows the current stage of development of OCA in different patient populations and the programs for certain of our other product candidates.



Our current plan is to commercialize OCA ourselves in the United States and Europe and other target markets such as Canada for the treatment of PBC, NASH and other indications primarily by targeting physicians who specialize in the treatment of liver and intestinal diseases, including both hepatologists and gastroenterologists. We own worldwide rights to OCA except for Japan, China and Korea, where we have exclusively licensed OCA to Sumitomo Dainippon along with an option to exclusively license OCA in certain other Asian countries. We own or have rights to various trademarks, copyrights and trade names used in our business, including Ocaliva.

By virtue of our patent portfolio and the proprietary know-how of our employees and our collaborators at the University of Perugia, we believe that we hold a leading position in the fields of bile acid chemistry and therapeutics. Starting with OCA and its underlying patents, which were assigned to us under our agreements with Professor Roberto Pellicciari, Ph.D., one of our co-founders, other researchers and the University of Perugia, our collaboration has resulted in a pipeline of bile acid analogs in addition to OCA, such as INT-767 and INT-777. Through our collaboration with Professor Pellicciari and TES Pharma Srl, we are continuing our

## [TABLE OF CONTENTS](#)

research to rationally design compounds that bind selectively and potently to FXR and other bile acid receptors. Our current patents for OCA are scheduled to expire at various times through 2033.

### **Our Strategy**

Our strategy is to develop and commercialize novel therapeutics for patients with progressive non-viral liver diseases, beginning with OCA for the treatment of PBC, NASH and other follow-on indications that we believe are underserved by existing marketed therapies. The key elements of our strategy are to:

- commercialize OCA in the United States, Europe and other countries, initially for the treatment of PBC;
- continue to develop OCA for the treatment of NASH and seek regulatory approval of OCA in this indication;
- continue to develop OCA in other orphan and more prevalent liver diseases; and
- advance the development of earlier-stage product candidates in our pipeline.

In order to achieve our strategic objectives, we have, and will remain, focused on hiring and retaining a highly skilled management team and employee base with extensive experience and specific skill sets relating to the selection, development and commercialization of therapies for liver diseases with high unmet medical need.

### **Overview of Liver Function, Bile Acids and Chronic Liver Diseases**

The liver performs many functions that are crucial for survival, including the regulation of bile acid metabolism. Bile acids are natural detergent-like emulsifying agents that are released from the gallbladder into the intestine when food is ingested, and are essential for the absorption of dietary cholesterol and other nutrients. Cholesterol bound by bile acids is taken up by the liver, where the cholesterol is then converted into one of two primary bile acids. The bile acids are then actively secreted into bile ducts, which eventually empty into the gallbladder. This digestive cycle of bile flow from gallbladder to intestine to liver and back is called the enterohepatic recirculation of bile.

In addition to facilitating nutrient absorption, bile acids have a much broader role than previously realized in regulating multiple biological functions. They are also complex signaling molecules that integrate metabolic and immune pathways involved in the healthy functioning of various tissues and organs. For example, the actions of bile acids in the liver, intestine and kidney regulate repair mechanisms that modulate inflammation and fibrosis, or scarring, which can lead to progressive organ damage.

The biological effects of bile acids are mediated through dedicated receptors. The best understood is the farnesoid X receptor, a nuclear receptor that regulates bile acid synthesis and clearance from the liver, thereby preventing excessive bile acid build-up in the liver, which may be toxic. As a result, FXR is a target for the treatment of liver diseases such as PBC and PSC that involve impaired bile flow, a condition called cholestasis, in which the liver is exposed to higher than normal levels of bile acids, causing significant damage over time due to the detergent effects of bile acids. In addition, bile acid activation of FXR induces anti-fibrotic, anti-inflammatory, anti-steatotic and other mechanisms that are necessary for the normal regeneration of the liver and may play a role in the treatment of more prevalent liver diseases such as NASH and alcoholic hepatitis. Based on the discovery of similar FXR-mediated protective mechanisms in other organs exposed to bile acids, we believe that FXR may also be a potential target for the treatment of a number of intestinal, kidney and other diseases.

### **Ocaliva for PBC**

OCA was approved in the United States in May 2016 under the accelerated approval pathway for use in patients with PBC under the brand name Ocaliva. We commenced sales and marketing of Ocaliva in the United States shortly after receiving such marketing approval, and Ocaliva is now available to patients primarily through a network of specialty pharmacy distributors. In December 2016, the European Commission granted conditional approval for Ocaliva for the treatment of PBC and we commenced our European commercial launch in certain markets in January 2017. We have submitted or are in the process of submitting dossiers to a number of reimbursement authorities in the European Union.

## TABLE OF CONTENTS

We are commercializing Ocaliva in the United States and Europe using our internal commercial organization. We believe that our commercial organization is equipped to address more than 4,000 physicians, covering 70% to 80% of patients with PBC in the United States, and 7,000 physicians in Europe. We are marketing to this target audience with our dedicated sales team. We have built and plan to continue to expand an internal commercial infrastructure in Europe, Canada and Australia and will likely seek to commercialize OCA through distribution or other collaboration arrangements outside of the United States, Europe, Canada and Australia, subject to obtaining necessary marketing approvals. We also have a team of field-based medical science liaisons, who play an important role in providing medical information about Ocaliva to clinicians and other health care professionals.

The approval of Ocaliva in the United States and Europe was supported by the results of the pivotal Phase 3 POISE trial, which was completed in March 2014. The POISE data showed that Ocaliva, at both a 10 mg dose and a 5 mg dose titrated to 10 mg, met the trial's primary endpoint of achieving a reduction in serum alkaline phosphatase, or ALP, to below a threshold of 1.67 times the upper limit of normal, or ULN, with a minimum of 15% reduction in ALP level from baseline, and a normal bilirubin level after 12 months of therapy. The percentage of patients meeting the POISE trial primary endpoint was 10% in the placebo group, 47% in the 10 mg OCA group and 46% in the OCA titration group (both dose groups  $p < 0.0001$  as compared to placebo) in an intention-to-treat analysis. The placebo group experienced a mean decrease in ALP from baseline of 5%, compared to a significant mean decrease of 39% in the 10 mg OCA dose group and 33% in the OCA titration group (both dose groups  $p < 0.0001$  as compared to placebo). Pruritus, generally mild to moderate, was the most frequently reported adverse event associated with OCA treatment.

We are currently conducting a Phase 4 confirmatory outcomes trial of Ocaliva in PBC, known as the COBALT trial, to support post-marketing regulatory requirements. Full approval for Ocaliva in PBC may be contingent upon verification and description of clinical benefit in confirmatory trials.

### ***Primary Biliary Cholangitis (PBC)***

PBC is a rare liver disease that primarily results from autoimmune destruction of the bile ducts that transport bile acids out of the liver, resulting in cholestasis. As the disease progresses, persistent toxic build-up of bile acids causes progressive liver damage marked by chronic inflammation and fibrosis. In response to the bile acid mediated toxicity seen in PBC, liver cells release ALP, a liver enzyme that is a key biomarker of the disease pathology. Elevated blood levels of ALP are used as the primary means of diagnosis of PBC and are closely monitored in patients as the most important indicator of treatment response and prognosis.

While PBC is rare, it is the most common cholestatic liver disease. An estimated 90% of patients are women, with approximately one in 1,000 women over the age of 40 afflicted by the disease. The mean age of diagnosis is about 40 years and the typical initial presentation occurs between the ages of 30 and 65 years. In the United States, the disease is currently the second leading indication for liver transplant among women. A majority of PBC patients are asymptomatic at the time of initial diagnosis, but most develop symptoms over time. Fatigue and pruritus, or itching, are the most common symptoms in PBC patients. Less common symptoms include dry eyes and mouth, as well as jaundice, which can be seen in more advanced disease. Based on the guidelines of the American Association for the Study of Liver Disease, or AASLD, and the European Association for the Study of the Liver, or EASL, the clinical diagnosis of PBC is established based on the presence of (i) a positive anti-mitochondrial antibody, or AMA, a marker of this autoimmune disease seen in up to 95% of PBC patients, and (ii) elevated serum levels of ALP. In the earlier stages of PBC, ALP is often the only abnormally elevated liver enzyme, rising to between two to ten times higher than normal values. Bilirubin is a marker of liver function and is also monitored in PBC to provide an indication of how well the liver is functioning. Liver biopsy can be used to confirm the diagnosis of PBC, but is not required and is becoming less-frequently performed.

For the year ended December 31, 2016, all of our \$18.2 million of net product sales for Ocaliva in PBC were generated in the United States. Financial information related to our significant customers is set forth in Note 3, "Concentration of Credit Risk" and "Accounts Receivable" to our consolidated financial statements included in this Annual Report on Form 10-K. Other financial information such as our total assets, net loss and operating expenses can be found in our consolidated financial statements included in this Annual Report on Form 10-K.

## **TABLE OF CONTENTS**

A number of published clinical studies have demonstrated that lower levels of ALP, both independently or in conjunction with normal bilirubin levels, correlate with a significant reduction in adverse clinical outcomes such as liver transplant and/or death in PBC patients. These studies include the result of meta-analyses of PBC clinical outcomes data of more than 6,000 PBC patients from 15 academic centers in eight countries that have been compiled by the Global PBC Study Group, which we sponsored, as well as a dataset of over 6,000 PBC patients across the United Kingdom compiled by the UK PBC Group. These represent the largest PBC clinical datasets assembled to analyze the correlation of biochemical therapeutic response with clinical outcomes in PBC patients.

Disease progression in PBC varies significantly, with median survival in untreated patients of 7.5 years if symptomatic at diagnosis and up to 16 years if asymptomatic at diagnosis. PBC patients whose disease is progressing have persistently elevated levels of ALP and other liver enzymes, with abnormal bilirubin levels heralding more advanced disease. Data from published long-term studies demonstrate that a significant portion of such patients with advancing disease progress to liver failure, transplant or death within five to ten years, despite receiving ursodiol, the standard of care therapy.

### ***Our PBC Opportunity***

Prior to Ocaliva, the only approved drug for the treatment of PBC was ursodeoxycholic acid, available generically as ursodiol, which is the standard initial course of therapy for all PBC patients. Ursodiol is a naturally occurring bile acid found in small quantities in humans and it is the least detergent of the various types of bile acids that make up the bile pool. In PBC patients, the typical daily dose of ursodiol of approximately one gram represents more than one-fifth of the entire bile pool and, after ongoing therapy, it will comprise at least half of the entire bile pool. It is believed that ursodiol treatment results in the bile pool being less toxic to the liver due to ursodiol's dilution of other more detergent bile acids.

In patients for whom ursodiol is effective, the treatment slows the progression of PBC, reducing the likelihood of liver failure and the need for transplant. As shown in numerous clinical trials of ursodiol treatment, a positive therapeutic response is primarily determined by sustained reduction of ALP levels, along with maintenance of normal bilirubin levels, indicating adequately compensated liver function. This biochemical improvement has been shown to correlate well with improved clinical outcomes such as transplant-free survival.

According to our analysis of industry data, there are approximately 290,000 people with PBC in our target markets, consisting of the United States, certain European countries, Canada, Australia and New Zealand. Based on our analysis of this data, we believe approximately 119,000 patients in our target markets have been diagnosed and are under the care of a physician for PBC. We currently are focusing our commercial efforts on the estimated 37,000 diagnosed PBC patients who have elevated ALP levels of at least 1.67 times ULN, despite receiving treatment with ursodiol. Of those PBC patients, approximately 15,000 are estimated to be in the United States and 22,000 in our target countries outside of the United States. In addition, we believe another 8,000 patients in our target countries, including approximately 4,000 patients in the United States, are intolerant to ursodiol or have discontinued ursodiol treatment due to lack of efficacy. Finally, we believe there are approximately an additional 35,000 patients in our target countries, including approximately 15,000 in the United States, who have an elevated ALP greater than ULN but less than 1.67 times ULN who may be treated with Ocaliva.

Our estimates of the potential market opportunity for OCA for the treatment of PBC include a number of key assumptions related to prevalence rates, patients' access to healthcare, diagnosis rates and patients' response to or tolerance of OCA, which are based on available literature and epidemiology research in PBC, our industry knowledge gained through market research and other methods, industry publications, third-party research reports and other surveys.

### ***Ongoing Confirmatory Clinical Outcomes Trial and Other Post Marketing Requirements***

As part of accelerated approval in the United States and conditional approval in the European Union, we are currently conducting a Phase 4 confirmatory outcomes trial of Ocaliva, known as the COBALT trial, to support post-marketing regulatory requirements. The goal of the trial is to confirm that reduction of ALP with OCA treatment is associated with a longer term benefit on liver-related clinical outcomes. This trial is currently enrolling patients and is expected to be completed on a post-marketing basis.

## TABLE OF CONTENTS

COBALT is designed to assess the effect of a once-daily dose of 5 mg or 10 mg of OCA in approximately 430 PBC patients with an inadequate therapeutic response to ursodiol or who are unable to tolerate ursodiol. In this trial, eligible patients with PBC continue their ursodiol treatment, except for those patients unable to tolerate ursodiol, and are being randomized into one of two arms of approximately 175 patients each. Patients receive, in addition to ursodiol, either placebo or 5 mg of OCA increasing over the course of the trial to 10 mg of OCA based on tolerability. The primary endpoint of the trial is based on clinical outcomes as measured by time to first occurrence of any of the following adjudicated events: death (all-cause), liver transplant, Model of End stage Liver Disease, or MELD, score greater than 15, hospitalization due to variceal bleeding, encephalopathy or spontaneous bacterial peritonitis, uncontrolled ascites or hepatocellular carcinoma.

We are currently discussing modifications to the COBALT trial to potentially include a broader cross-section of PBC patients with early, moderately advanced and advanced disease according to the so-called Rotterdam criteria. We have agreed to evaluate the safety and efficacy of Ocaliva in patients with moderate to severe hepatic impairment and as monotherapy in patients with PBC. Finally, we have also agreed to develop and characterize a lower dose formulation of Ocaliva to allow for once daily dosing in patients with moderate or advanced hepatic impairment.

### **Nonalcoholic Steatohepatitis (NASH)**

NASH is a common and serious chronic liver disease caused by excessive fat accumulation in the liver, or steatosis, that induces inflammation and may lead to progressive fibrosis and cirrhosis, followed by eventual liver failure and death. In NASH patients, for reasons that are as yet not completely understood, steatosis and other factors such as insulin resistance induce chronic inflammation in the liver and may lead to progressive fibrosis and cirrhosis, followed by eventual liver failure and death.

Although difficult to precisely estimate, current epidemiology research estimates that 5% of the total U.S. population and roughly 4% of the total population in France, Germany, Italy, Spain and the United Kingdom, or the EU5 countries, has NASH. More than 30% of patients are believed to have fibrosis of stage 2 or greater. We believe that similar prevalence will be found in other European countries, Japan and other developed countries. Additionally, NASH has become a highly prevalent liver disease in developing countries such as India and China. Although the prevalence of NASH is lower in children, it has also become a serious disease burden in the pediatric population. There are currently no drugs approved for the treatment of NASH.

Other common co-existing conditions such as obesity and type 2 diabetes, which are present in a majority of NASH patients, are important risk factors. NASH has been linked in both developed and developing countries to the adoption of a Western diet, with increased consumption of processed foods containing polyunsaturated fatty acids and fructose. More than 20% of NASH patients progress to cirrhosis within a decade of diagnosis. Owing to the rapidly increasing prevalence of the disease, NASH has become the second most common reason for liver transplant in the United States and is projected to become the leading indication for transplant in the next few years, overtaking both chronic hepatitis C infection and alcoholic liver disease. NASH patients have a ten-fold greater risk of liver-related mortality as compared to the general population. Additionally, NASH is now considered to be the leading, and a rapidly increasing, cause of hepatocellular carcinoma, or primary liver cancer, of which up to 40% of cases in NASH patients develop prior to developing cirrhosis.

Currently, a definitive diagnosis of NASH is based on a histologic assessment of a liver biopsy for several key features associated with NASH, including, but not limited to, steatosis, lobular inflammation and hepatocyte ballooning. However, non-invasive methods of diagnosis are being explored, including transient elastography (an ultrasound technology approved in Europe and more recently in the United States for the measurement of liver fibrosis), magnetic resonance imaging and serum biomarkers. NASH diagnosis rates in the United States and the EU5 countries are very low, driven by a lack of approved treatment options and a lack of non-invasive diagnosis options. We believe the availability of novel therapeutics and non-invasive technologies will be critical to increase diagnosis rates.

## [TABLE OF CONTENTS](#)

### ***Currently Available Treatment Options for NASH***

There are currently no drugs approved for the treatment of NASH. However, various therapeutics are used off-label, such as vitamin E (an antioxidant), insulin sensitizers (e.g., metformin), antihyperlipidemic agents (e.g., gemfibrozil), pentoxifylline and ursodiol. Lifestyle changes, including modification of diet and exercise to reduce body weight, as well as treatment of concomitant diabetes and dyslipidemia, are commonly accepted as the standard of care, but have not conclusively been shown to prevent disease progression.

### ***NASH Unmet Medical Need***

Although some of the off-label treatments described above have been studied as possible treatments for NASH, none has been approved by the FDA or European Medicines Agency, or EMA, as a treatment for this disease. Currently, the outlook and treatment options for end-stage NASH patients are limited. Although liver transplant can be curative, many patients fail to receive a donor organ in time, and for those who do, there are very significant clinical risks, such as infection and organ rejection, as well as significant costs. In addition, the post-transplant recurrence rate of NASH has been shown to be as high as 25% at 18 months. Given the lack of available treatment options, we believe that there is a significant unmet need for a novel therapy for NASH, particularly in those patients with advanced fibrosis and cirrhosis and those with a high risk of disease progression due to other co-morbidities such as type 2 diabetes.

### ***Our Solution: OCA for NASH***

#### *OCA's Potential Benefits in NASH*

FXR activation has been shown to play a key role in the regulation of the metabolic pathways relevant to NASH, highlighting FXR as a potential drug target for treatment of the disease. Given the significant unmet medical need of patients with NASH, we believe that the potent ability of OCA to activate FXR could result in a major clinical benefit through potential amelioration or reversal of liver fibrosis, inflammation, steatosis, and insulin resistance. We believe that OCA has the potential to provide the following benefits in the treatment of NASH:

- *Pharmacological Activity.* In addition to achieving the primary endpoint in the Phase 2b FLINT trial in NASH patients, a significantly greater number of OCA-treated patients achieved an improvement of at least one fibrosis stage (35% vs 19%,  $p = 0.004$ ), with OCA showing greater response rates as compared to placebo across all stages of fibrosis. In animal models, sustained FXR activation with OCA treatment has resulted in the reversal of liver fibrosis, the reversal of portal hypertension, the prevention of atherosclerosis, and improvements in triglycerides, inflammation, steatosis and insulin sensitivity. Mice that lack functional FXR (so-called knockout mice) spontaneously develop NASH accompanied by hypertriglyceridemia and insulin resistance, and go on to develop hepatocellular carcinoma, or primary liver cancer. We believe that the combined mechanisms of FXR activation, coupled with the occurrence of NASH in animals lacking FXR, support the potential disease-modifying therapeutic potential of OCA in directly addressing the underlying disease pathology in NASH.
- *Ease of Use.* We anticipate seeking approval of OCA for the treatment of NASH at a single daily dose.

### ***Phase 2 NASH Program for OCA***

#### *Phase 2 Trial: OCA as Therapy in Type 2 Diabetic Patients with NAFLD*

We previously completed a double-blind, placebo-controlled Phase 2 clinical trial of OCA in 64 type 2 diabetic patients with NAFLD. In this trial, OCA therapy significantly improved insulin sensitivity both in the liver and peripheral tissues, thereby meeting the primary endpoint in the trial with a mean improvement in liver insulin sensitization from baseline of approximately 24.5% in the combined OCA dose groups, as compared to a worsening of approximately 5.5% in the placebo group ( $p = 0.011$ ). Insulin resistance, particularly in the liver, is considered to be an important contributor to NASH disease pathology. In this trial, significant improvements in weight loss were also noted in patients receiving OCA therapy, along with improvements in liver enzymes such as GGT and AST.

## TABLE OF CONTENTS

OCA was generally well-tolerated by the trial patients, with side effects in the treatment groups not meaningfully different than those reported on placebo (apart from mild constipation in the 50 mg group). Consistent with anticipated FXR-related lipid metabolic effects starting with the clearance of excess lipid load from the liver, there were changes in mean serum lipid profiles observed in the OCA treatment groups compared with the placebo group that included decreased concentrations of triglycerides, increased concentrations of LDL-C and slightly decreased concentrations of HDL-C from baseline. In our publication of the results, we observed that once-daily treatment for six weeks at the 25 mg OCA dose, which we subsequently selected to advance in our NASH development program, led to an approximately 12% decrease in mean triglycerides to 170 mg/dL from a baseline mean level of 193 mg/dL, an approximately 22% increase in mean LDL cholesterol to 120 mg/dL from a baseline mean level of 98 mg/dL, and an approximately 5% decrease in mean HDL cholesterol to 35 mg/dL from a baseline mean level of 37 mg/dL.

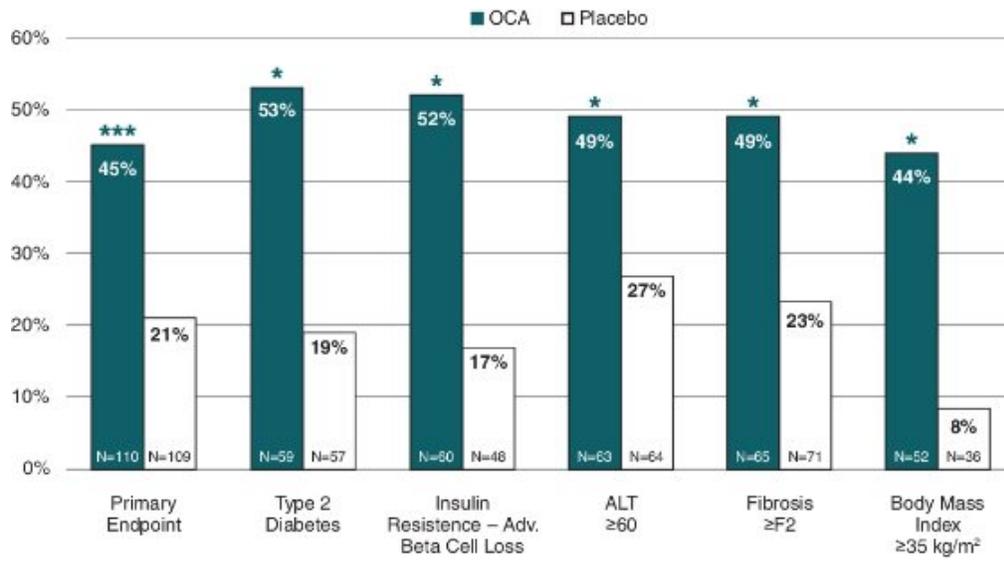
### *Phase 2b FLINT Trial for NASH*

OCA achieved the primary endpoint in the Phase 2b trial for the treatment of NASH, known as the FLINT trial, which was sponsored by the NIDDK, a part of the National Institutes of Health. A significantly greater number of OCA-treated patients also achieved an improvement of at least one fibrosis stage (35% vs 19%,  $p = 0.004$ ), with OCA showing greater response rates as compared to placebo across all stages of fibrosis. The results from the FLINT trial were published in the *Lancet* in November 2014. This trial was a double-blind, placebo-controlled trial of a once-daily dose of 25 mg of OCA or placebo given for 72 weeks in 283 patients with biopsy-proven NASH.

#### *a. Primary Endpoint*

The percentage of patients meeting the FLINT primary histological endpoint, defined as a decrease in the NAFLD Activity Score, or NAS, of at least two points with no increase in the fibrosis score following 72 weeks of treatment, was 45% in the OCA treatment group and 21% in the placebo group ( $p = 0.0002$ ,  $n = 219$ ). The mean pre-treatment baseline NAS for patients in the OCA treatment group was 5.3 of a total possible score of eight (comprised of hepatocellular ballooning 0 – 2, lobular inflammation 0 – 3 and steatosis 0 – 3). Subgroup analyses showed significant response rates in the OCA treatment group in patients with risk factors for disease progression, including baseline fibrosis stage, co-morbid type 2 diabetes mellitus, ALT, insulin resistance and severe obesity (each factor  $p < 0.05$  for OCA compared to placebo based on 95% confidence interval of published odds ratios). The graph below shows the results of the primary endpoint in the FLINT trial and the improvements in NAS for various subgroups published in the *Lancet*.

**Primary Endpoint: Improvement in NAS by  $\geq$  Two Points with no Worsening of Fibrosis**



\*  $p < 0.05$ , \*\*\*  $p < 0.001$ . P-values calculated with the Cochran-Mantel-Haenszel test, stratified by clinic and diabetes status.

*b. Secondary Efficacy Endpoint: Fibrosis Improvement*

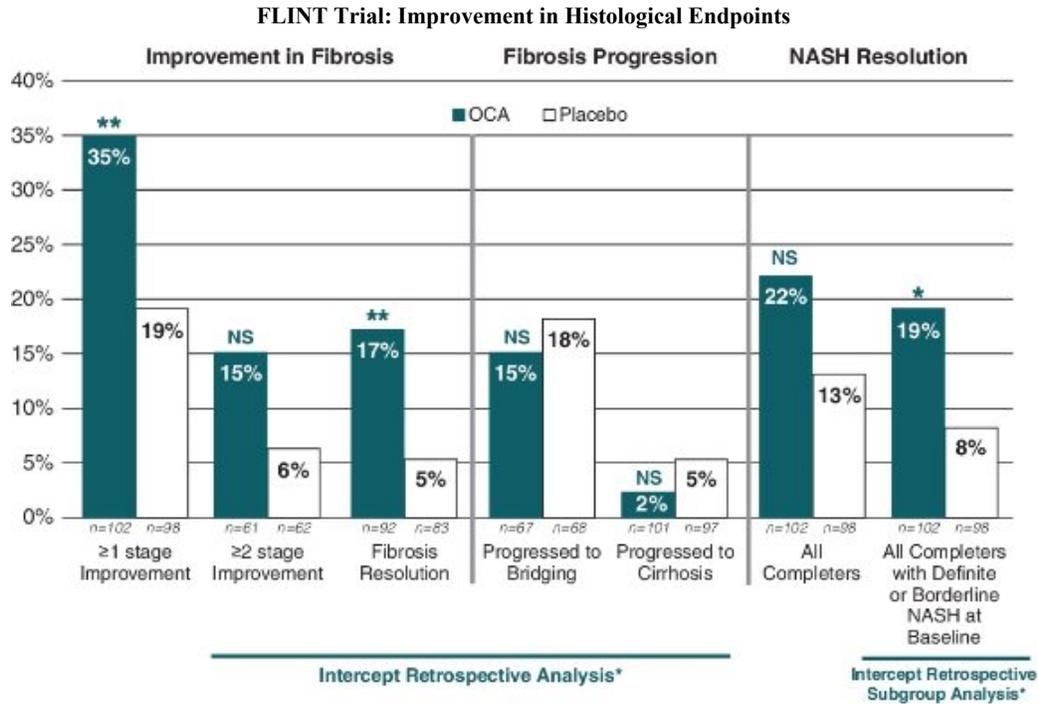
A significantly greater number of OCA-treated patients also achieved an improvement of at least one fibrosis stage (35% versus 19%,  $p = 0.004$ ). Based on our retrospective analyses of the FLINT data, more OCA-treated patients exhibited fibrosis improvement of at least two fibrosis stages (15% versus 6%, not significant) and exhibited fibrosis improvements regardless of baseline fibrosis stage and a significantly greater number of OCA-treated patients also achieved complete resolution of fibrosis (17% versus 5%,  $p = 0.0018$ ). Also, our retrospective analysis of the FLINT data showed that fewer OCA-treated patients progressed to bridging fibrosis (15% versus 18%, not significant) or to cirrhosis (2% versus 5%, not significant). The NASH clinical research network fibrosis staging system was used to categorize the pattern of fibrosis and architectural remodeling of the liver: no fibrosis (F0), perisinusoidal or periportal fibrosis (F1), perisinusoidal and periportal fibrosis (F2), bridging fibrosis (F3) and cirrhosis (F4). Fibrosis sub-stages 1a, 1b and 1c were considered F1 for the analysis.

*c. Secondary Efficacy Endpoint: NASH Resolution*

The secondary endpoint of NASH resolution, based on a global histological assessment, also showed improvement, although not statistically significant (22% versus 13%,  $p = 0.0832$ , not significant). A central reading of all baseline and end-of-trial biopsies was performed at the end of the trial, based on which only 80% of patients were confirmed to have definite NASH, while the remaining 20% were diagnosed as borderline NASH (10%) or not-NASH (10%). A retrospective subgroup analysis on the completer population comprised only of definite NASH patients at baseline showed that a significantly greater number of OCA-treated patients achieved NASH resolution compared with placebo-treated patients (19% versus 8%;  $p = 0.0278$ ).

[TABLE OF CONTENTS](#)

The graph below shows these results from the FLINT trial for fibrosis improvement, fibrosis resolution, fibrosis progression and NASH resolution.



\*  $p < 0.05$ , \*\* $p < 0.01$ . P-values calculated with the Cochran-Mantel-Haenszel test, stratified by clinic and diabetes status. NS indicates that the results are not significant.

Retrospective analyses after the unblinding of results can potentially introduce bias and regulatory authorities typically give greatest weight to results from pre-specified analyses as compared to retrospective analyses.

*d. Additional Secondary Endpoints*

More OCA-treated patients experienced significant improvements in the major histological features of NASH, including steatosis (61% versus 38%,  $p = 0.001$ ), lobular inflammation (53% versus 35%,  $p = 0.006$ ) and hepatocellular ballooning (46% versus 31%,  $p = 0.03$ ), as compared to the placebo treatment group. Trends were similar between the two treatment groups for portal inflammation, which is not a component of the NAS and is typically mild in adult NASH patients.

The histological improvements observed in OCA-treated patients versus placebo were accompanied by significant reductions in relevant biochemical parameters, including the serum liver enzymes ALT ( $p < 0.0001$ ), AST ( $p = 0.0001$ ) and GGT ( $p < 0.0001$ ), each of which were above generally accepted normal limits at baseline, and total bilirubin ( $p = 0.002$ ). A modest but statistically significant increase in ALP ( $p < 0.0001$ ) in the OCA treatment group was also observed, but levels remained within typical normal limits.

OCA treatment was associated with serum lipid changes, including average increases in total cholesterol and LDL-C and an average decrease in HDL-C, that developed within 12 weeks of treatment initiation, then began reversing through the end of treatment and returned to baseline during the 24-week post-treatment follow-up phase. Based on these observations, lipid management was emphasized partway into the trial, using generally accepted guidelines. At 72 weeks as compared to baseline, the following effects were observed in the OCA treatment group: an increase in mean total cholesterol (0.16 mmol/L or 6 mg/dL increase OCA versus 0.19 mmol/L or 7mg/dL decrease placebo,  $p < 0.0009$ ), an increase in mean LDL-C (0.22 mmol/L or 9 mg/dL increase OCA versus 0.22 mmol/L or 8 mg/dL decrease placebo,  $p < 0.0001$ ), a decrease in mean

## TABLE OF CONTENTS

HDL-C (0.02 mmol/L or 1 mg/dL decrease OCA versus 0.03 mmol/L or 1 mg/dL increase placebo,  $p = 0.01$ ) and a decrease in triglycerides (0.22 mmol/L or 20 mg/dL decrease OCA versus 0.08 mmol/L or 7 mg/dL decrease placebo,  $p = 0.88$ , not significant).

A post-hoc analysis showed OCA-treated patients who initiated statins during the FLINT trial ( $n=26$ ) experienced a rapid reversal of their observed mean LDL-C increase to below baseline levels, with a mean decrease after 72 weeks of treatment of -18.9 mg/dL. In contrast, other OCA-treated patients with no reported initiation or change in statin therapy experienced an increase in LDL-C that peaked at week 12 and was sustained over the 72 week treatment period. Patients treated with statins at baseline who maintained statin treatment over the duration of the study ( $n=50$ ) experienced a mean LDL-C increase of 8.7 mg/dL at 72 weeks. Patients not treated with statins during the study ( $n=65$ ) experienced a mean LDL-C increase of 16.0 mg/dL. Treatment related LDL-C increases in all groups reversed with treatment discontinuation. This analysis suggests that the OCA-associated LDL-C increase reaches a maximum peak and plateaus soon after initiation of therapy and that concomitant statin use in NASH patients receiving OCA may mitigate treatment-related LDL-C increases.

In the FLINT trial, statistically significant weight loss of an average of 2.3 kilograms was observed in OCA patients compared to no weight loss in the placebo group ( $p = 0.008$ ), and this weight loss reverted towards baseline during the 24-week follow-up phase. A pre-specified sensitivity analysis conducted by the investigators showed that weight loss was not a driver of the primary endpoint. An increase in a marker of hepatic insulin resistance known as HOMA-IR (calculated using the product of fasting plasma insulin and glucose) was observed at 72 weeks in the OCA treatment group ( $p = 0.01$ ). However, there was an imbalance in baseline plasma insulin levels (201 pmol/L OCA versus 138 pmol/L placebo), and an even larger relative and absolute increase in HOMA-IR was observed in the placebo group at the conclusion of the 24-week follow-up phase. This is potentially attributable to the inherent variability in HOMA-IR measurements, particularly in patients with type 2 diabetes, that have been shown to make single time-point to time-point changes of this magnitude clinically uninterpretable. There were virtually no changes in mean hemoglobin A1c, a measure of average blood sugar control over a period of approximately three months, in either OCA or placebo groups at 72 weeks. In a previous study of OCA in diabetic NAFLD patients, described in more detail above, employing the hyperinsulinemic-euglycemic insulin clamp, the gold standard for detecting changes in insulin resistance, OCA improved the glucose disposal rate consistent with reduced insulin resistance.

### *e. Safety and Tolerability*

OCA was generally well tolerated in the FLINT trial. Adverse events were generally mild to moderate in severity and the incidence in the OCA and placebo treatment groups was similar for all symptoms except pruritus. Pruritus in the OCA treatment group occurred more frequently (23% versus 6%,  $p < 0.0001$ ), at a higher grade (predominantly moderate pruritus) but resulted in only one patient discontinuation. The incidence of severe or life threatening events was not different between the two treatment groups and most of the events in both groups were deemed to be unrelated to treatment, including all severe or life threatening cardiovascular events. As previously disclosed, two deaths occurred in the OCA treatment group, but neither was considered related to OCA treatment.

### **Phase 2 Sumitomo Dainippon Trial for NASH**

In October 2015, we announced the results of a 72-week Phase 2 dose ranging trial of OCA in 200 adult patients with NASH in Japan. The trial was conducted by our collaborator, Sumitomo Dainippon. In this trial, 202 Japanese biopsy-proven NASH patients (NAFLD Activity Score, or NAS, of 5-8) were randomized into one of four arms to receive either a 10mg, 20mg or 40mg dose of OCA, or placebo, and 200 of these patients — 50 per group — initiated treatment for a 72-week double-blind treatment phase, followed by a 24-week off treatment phase. The primary endpoint was histologic improvement defined as at least a two point improvement in NAS with no worsening of fibrosis.

The primary efficacy analysis was conducted on an intention to treat, or ITT, basis, testing the dose dependent effects of once daily OCA (10 mg, 20 mg and 40 mg) versus placebo on the primary endpoint. The ITT analysis included all randomized patients who received treatment (50 per group), and patients who discontinued or did not have a repeat biopsy were treated as non-responders. A pre-specified completer

## TABLE OF CONTENTS

analysis was conducted on the patients who had biopsies at both baseline and 72 weeks (45, 44, 44 and 37 patients in the placebo, 10 mg, 20 mg and 40 mg OCA groups, respectively).

This trial did not meet its primary endpoint with statistical significance. The ITT results in the table below show a dose dependent increase in the percentage of OCA treated patients compared to placebo who achieved the primary endpoint ( $p=0.053$ , not significant). The 40 mg OCA dose group achieved statistical significance on the primary endpoint compared to placebo ( $p=0.0496$ ). Dose-dependent trends not reaching statistical significance were also observed for several other pre-specified histologic endpoints, including the percentage of patients with steatosis and inflammation improvement, ballooning resolution and NASH resolution. No difference was seen in fibrosis improvement in the OCA groups compared to placebo.

ITT Results	Placebo N=50	10 mg N=50	20 mg N=50	40 mg N=50	
NAS improvement $\geq 2$ points with no worsening of fibrosis	10 (20)%	11 (22)% $p=0.8070^{**}$	14 (28)% $p=0.3378^{**}$	19 (38)% $p=0.0496^{**}$	$p=0.053^*$

\* Primary efficacy analysis is a stratified Cochran-Armitage test with multiple contrast coefficients. Statistical significance is based on a p-value  $< 0.05$ .

\*\* The secondary efficacy analysis is a CMH (Cochran-Mantel-Haenszel) test stratified by baseline fibrosis stage for Pairwise comparison of each OCA group compared to the placebo group. The multiplicity was not adjusted.

In the completer analysis, similar dose dependent effects were observed, with 51% of patients in the 40 mg dose group compared to 22% in the placebo group meeting the primary endpoint ( $p=0.0061$ ).

With the exception of dose dependent pruritus, OCA appeared to be generally safe and well tolerated. The number of pruritus associated discontinuations were 0, 0, 2 and 5 patients in the placebo, 10 mg, 20 mg and 40 mg OCA groups, respectively. Changes in lipid parameters, including LDL-C, HDL-C and triglycerides, appeared to be consistent with previously reported lipid changes in Western NASH patients. No other meaningful differences in the rate of adverse events between the OCA and placebo groups were noted.

We have been informed by Sumitomo Dainippon that it is exploring the initiation of its registrational trials for OCA in NASH patients intended to support the registration of this indication in Japan.

### **REGENERATE: Phase 3 Trial in NASH with Liver Fibrosis**

In September 2015, we initiated the previously announced international Phase 3 trial of OCA in patients with non-cirrhotic NASH with advanced liver fibrosis, known as the REGENERATE trial, which is currently enrolling patients. The REGENERATE trial was designed following discussions with the FDA and EMA. The study population is expected to primarily be comprised of Western NASH patients with histologic evidence of stage 2 or stage 3 liver fibrosis. In addition, the trial will include an exploratory cohort of NASH patients with histologic evidence of early stage 1 liver fibrosis and concomitant diabetes, obesity or elevated ALT, who are at increased risk of progression to cirrhosis. These patients with early stage 1 liver fibrosis will not be included in the primary endpoint analysis.

REGENERATE is designed as a double-blind, placebo-controlled Phase 3 clinical trial and is expected to enroll approximately 2,000 NASH patients at up to 350 qualified centers worldwide and assess the potential benefits of OCA treatment on liver-related and other clinical outcomes. Patients are being randomized into one of three groups receiving a once-daily dose of placebo, 10 mg OCA or 25 mg OCA. The trial will include a pre-planned interim histology analysis after 72 weeks of treatment in patients with stage 2 or 3 liver fibrosis. If successful, the interim analysis for REGENERATE is intended to serve as the basis for seeking initial U.S. and international marketing approvals of OCA for the treatment of NASH patients with liver fibrosis. The REGENERATE trial will remain blinded after the interim analysis and continue to follow patients until the occurrence of a pre-specified number of adverse liver-related clinical events, including progression to cirrhosis, to confirm clinical benefit on a post-marketing basis.

## TABLE OF CONTENTS

In February 2017, we announced modifications to the REGENERATE trial primary endpoint. Based on discussions with the FDA, the primary endpoint for the interim analysis for REGENERATE may be achieved based on one of: (i) the proportion of OCA-treated patients relative to placebo achieving at least one stage of liver fibrosis improvement with no worsening of NASH (defined as no increase in hepatocellular ballooning or lobular inflammation) or (ii) the proportion of OCA-treated patients relative to placebo achieving NASH resolution with no worsening of liver fibrosis. Prior to this modification of the interim analysis, each of the two endpoints was required to be achieved as a co-primary endpoint. Furthermore, we selected a definition for NASH resolution for the trial, which defines a responder as a patient achieving a histologic score of 0 for ballooning and 0 or 1 for inflammation.

In a retrospective analysis of data from the Phase 2 FLINT trial conducted in a REGENERATE-matched patient cohort, approximately 43% of OCA-treated patients as compared to approximately 21% of patients on placebo achieved at least a one stage improvement in liver fibrosis without any worsening of NASH ( $p=0.0059$ ). In a similar retrospective analysis on the FLINT data using the definition we selected for NASH resolution, approximately 20% of OCA-treated patients as compared to approximately 6% of patients on placebo achieved NASH resolution with no worsening of fibrosis ( $p=0.0289$ ).

As a result of these changes, we anticipate that the interim analysis cohort for REGENERATE will consist of approximately 750 NASH patients with stage 2 or 3 fibrosis. We also anticipate completing the enrollment of the interim analysis cohort by mid-2017, with data from the interim analysis anticipated in 2019.

### ***Additional NASH Clinical Programs***

In December 2015, we initiated a Phase 2 clinical trial, known as the CONTROL trial, to characterize the lipid metabolic effects of OCA and cholesterol management effects of concomitant statin administration in NASH patients. CONTROL enrolled 80 NASH patients who are naïve to statin therapy or have undergone a statin washout, and will include a 16-week double-blind phase followed by an optional two year long term safety extension phase. We expect to report data from CONTROL in 2017.

We intend to initiate a Phase 3 program in NASH patients with cirrhosis in 2017. The objectives of this trial are to understand the safety and tolerability of OCA in NASH patients with cirrhosis, and assess the ability of OCA to reverse fibrosis in this patient population.

### ***NASH Regulatory Pathway***

In January 2015, OCA received breakthrough therapy designation from the FDA for the treatment of NASH patients with liver fibrosis. The breakthrough therapy designation was created by the FDA to speed the availability of new therapies for serious or life-threatening conditions. Drugs qualifying for this designation must show credible evidence of a substantial improvement on a clinically significant endpoint over available therapies, or over placebo if there is no available therapy. The breakthrough therapy designation constitutes one of four expedited programs for serious conditions including accelerated approval, priority review and fast-track designation, all of which can also be granted to the same drug if relevant criteria are met. The breakthrough therapy designation confers several benefits, including intensive FDA guidance and discussion and eligibility for submission of a rolling NDA.

We intend to seek initial U.S. and international marketing approvals of OCA for the treatment of NASH patients with liver fibrosis based on the interim results for our Phase 3 REGENERATE trial.

### **Primary Sclerosing Cholangitis (PSC)**

PSC is a rare, serious life-threatening, chronic cholestatic liver disease characterized by progressive destruction of bile ducts with eventual onset of cirrhosis and its complications.

## TABLE OF CONTENTS

PSC is usually diagnosed by preliminary assessment of liver biochemistry, with or without reported symptoms, and confirmed by cholangiography, typically magnetic resonance cholangiopancreatography or endoscopic retrograde cholangiopancreatography, or ERCP. ALP is elevated in most PSC patients, consistent with cholestasis, and ALT and GGT are also typically elevated, but not in all cases. Bilirubin is often normal in early-stage PSC but increases with progression of the disease. The mean age at diagnosis is 40 years. Approximately 75% of PSC patients have overlapping inflammatory bowel disease, principally ulcerative colitis.

Median survival for PSC patients has been previously estimated as 8 to 12 years from diagnosis in symptomatic patients, depending upon stage of the disease at the time of diagnosis. Complications involving the biliary tree are common and include cholangitis as well as ductal strictures and gallstones, both of which may require frequent endoscopic or surgical interventions. PSC is often complicated by the development of malignancies, with cholangiocarcinoma being the most common.

Despite evaluation of multiple treatments, liver transplant is currently the only treatment shown to improve clinical outcomes. Ursodiol is often used for the treatment of PSC due to improvements in liver biochemistry following initiation of therapy. Despite general biochemical improvement, ursodiol has not been shown to improve transplant-free survival and, at high doses, has been associated with increased risk for serious complications. However, as there are no approved drugs for the treatment of PSC, some physicians treat patients with ursodiol, typically at a dose of 13 to 15 mg/kg/day. PSC is the fourth leading indication for liver transplant. However, the post-transplant recurrence rate of PSC has been shown to be as high as 20%.

### ***Phase 2 AESOP Trial: OCA as Therapy in PSC***

In September 2016, we completed enrollment in an international Phase 2 clinical trial, referred to as the AESOP trial, to evaluate the effects of 24 weeks of treatment with varying doses of OCA compared to placebo in patients with PSC. The primary endpoint is the reduction of serum ALP levels, as compared to placebo. In addition, OCA's effect on other secondary liver function endpoints, as well as symptoms of ulcerative colitis (a disease occurring in a majority of patients with PSC), will be assessed. Following the completion of the 24-week double-blind portion of the trial, patients will be given the option to enroll in an open-label long-term safety and efficacy extension trial.

### **Biliary Atresia**

Biliary atresia is a life-threatening condition in infants in which the bile ducts inside or outside the liver do not have normal openings. With biliary atresia, bile becomes trapped, builds up, and damages the liver. The damage leads to scarring, loss of liver tissue, and cirrhosis. The two types of biliary atresia are fetal and perinatal. Fetal biliary atresia appears while the baby is in the womb. Perinatal biliary atresia is much more common and does not become evident until two to four weeks after birth. Some infants, particularly those with the fetal form, also have birth defects in the heart, spleen, or intestines. Biliary atresia is rare and only affects about one out of every 18,000 infants. The disease is more common in females, premature babies, and children of Asian or African American heritage. Biliary atresia is not an inherited disease and is most likely caused by an event in the womb or around the time of birth. No single test can definitively diagnose biliary atresia, resulting in the need for a series of tests. All infants who still have jaundice two to three weeks after birth, or who have gray or white stools after two weeks of birth, should be checked for liver damage.

Once diagnosed, biliary atresia is treated with a liver transplant or, more frequently, a surgery called the Kasai procedure, in which the bile ducts are connected directly to the small intestine. After the Kasai procedure, some infants continue to have liver problems and, even with the return of bile flow, some infants develop cirrhosis. Possible complications after the Kasai procedure include ascites, bacterial cholangitis, portal hypertension, and pruritus. Even after a successful Kasai surgery, most infants with biliary atresia slowly develop cirrhosis over the years and require a liver transplant by adulthood.

### ***Phase 2 CARE Trial: OCA as Therapy in Biliary Atresia***

In October 2015, we initiated a Phase 2 clinical trial of OCA, referred to as the CARE trial, in pediatric patients with biliary atresia. The CARE trial will evaluate the effects of 11 weeks of OCA treatment where patients with biliary atresia are randomized to varying doses of OCA or a control group receiving only their current treatment. The primary endpoint is to evaluate the pharmacokinetics and the safety and tolerability of

## TABLE OF CONTENTS

OCA treatment. In addition, OCA's effect on hepatobiliary indices and biomarkers will be assessed. This trial is anticipated to enroll approximately 60 patients in the United States and Europe. All patients will be given the option to enroll in an open-label long-term safety and efficacy extension trial. In addition to studying the effects of OCA treatment in biliary atresia, this trial is a part of the approved Pediatric Investigation Plan, or PIP, in support of the Marketing Authorization Application, or MAA, for OCA in PBC in the European Union.

### **Potential Future Product Candidates**

In addition to OCA, we are developing other novel bile acid analog compounds targeting FXR and a second dedicated bile acid receptor called TGR5, which is a target of interest for the treatment of type 2 diabetes and other gastrointestinal indications. We intend to continue advancing these and other product candidates as we build our pipeline.

#### ***INT-767***

INT-767 is an orally administered dual FXR and TGR5 agonist that, like OCA, is derived from the primary human bile acid CDCA. This product candidate has been shown to be approximately three times more potent than OCA as an FXR agonist. In animal models of chronic liver, intestinal and kidney diseases, INT-767 has consistently demonstrated greater anti-fibrotic and anti-inflammatory effects than OCA.

We have received assignments of rights to the INT-767 patent portfolio from all inventors, with the exception of one inventor. That inventor is contractually obligated to provide an assignment to us. Thus, we believe that we are the owner of the INT-767 patent portfolio by virtue of this contractual obligation and the patent assignments we have received.

We have completed a Phase 1 clinical trial of INT-767 in healthy volunteers. The goal of the Phase 1 trial was to assess safety and pharmacokinetics in a single ascending dose escalation phase followed by a multiple ascending dose phase in healthy volunteers. Following analysis of the results, we plan to evaluate next steps for a Phase 2 trial of INT-767 in NASH patients with liver fibrosis in 2017.

#### ***INT-777***

INT-777 is an orally administered TGR5 agonist that is derived from the primary human bile acid cholic acid. We have completed the preclinical studies necessary for the filing of an IND. By virtue of the patent assignments we have received and other contractual obligations owed to us, we believe we are the exclusive owner of the INT-777 patent portfolio.

Our in vitro studies of INT-777 showed that the product candidate has the potential to selectively target TGR5, a receptor that has been shown to directly regulate the release of glucagon like peptide-1, or GLP-1, in the intestine with resulting insulin sensitizing effects. There are several important and effective marketed drugs that enhance the effects of GLP-1 through different mechanisms, but none are able to induce the endogenous production of this hormone, and we believe there is interest in the potential for a TGR5 agonist to provide additive benefits. TGR5 has also been shown in animal models to regulate other metabolic pathways in brown fat and skeletal muscle that drive energy expenditure. The receptor may also play a role in the control of inflammation, which is increased in insulin resistant diabetic conditions.

In animal models of diabetes, treatment with INT-777 induced GLP-1 secretion, with resulting insulin sensitivity and normalization of glycemic control, increased basal energy expenditure and prevention of weight gain, and a reduction in blood lipid levels together with liver steatosis and fibrosis. We believe that these preclinical results could support further development of INT-777 and our other TGR5 agonists in the treatment of type 2 diabetes, associated metabolic disorders and other gastrointestinal indications. We intend to continue development of INT-777 through potential collaborations with third parties, over the next several years.

### **Strategic Collaborations and Research Arrangements**

#### ***Sumitomo Dainippon Pharma***

On March 29, 2011, we entered into a license agreement with Sumitomo Dainippon Pharma Co., Ltd., under which we granted Sumitomo Dainippon an exclusive license to research, develop and commercialize OCA as a therapeutic for the treatment of PBC and NASH in Japan and China (excluding Taiwan). Under the

## TABLE OF CONTENTS

terms of the agreement, Sumitomo Dainippon is required to use commercially reasonable efforts to develop and commercialize OCA in its licensed territories for the treatment of PBC and NASH, and we are obligated under the agreement to use commercially reasonable efforts to develop OCA outside of Sumitomo Dainippon's licensed territories. We are also responsible for supplying Sumitomo Dainippon with clinical and commercial supply of OCA requested by Sumitomo Dainippon pursuant to clinical and commercial supply agreements that include terms specified in the agreement. Sumitomo Dainippon has agreed during the term of the agreement to not commercialize any compound that is an FXR agonist for use in the treatment of PBC or NASH other than pursuant to the agreement.

We granted Sumitomo Dainippon an option under the agreement to obtain an exclusive license to commercialize OCA for indications other than PBC and NASH on the same terms as are set forth in the agreement. Sumitomo Dainippon may exercise this option with respect to any indication at any time during the two-year period commencing on the date we notify Sumitomo Dainippon of the commencement of a Phase 3 clinical trial involving OCA for such indication, subject to Sumitomo Dainippon's payment of an option fee for each additional indication. No option fee is required to be paid by Sumitomo Dainippon if it exercises its option for any additional indication only in China.

In addition to Japan and China, which are the original licensed territories, we also granted Sumitomo Dainippon an option under the agreement to add Korea, Taiwan, Malaysia, Vietnam, the Philippines, Thailand, Singapore and/or Indonesia to its exclusive license on the same terms as are set forth in the agreement. Sumitomo Dainippon may exercise this option with respect to any such country at any time up until the date on which regulatory approval to commercialize OCA is granted in Japan, subject to Sumitomo Dainippon's payment of an option fee for each country. If we accept or make a bona fide offer of exclusive rights to a third party to develop and commercialize OCA in any of these countries, we must first notify Sumitomo Dainippon and Sumitomo Dainippon has the right to exercise its option with respect to any such country. In addition, prior to accepting or making a bona fide offer of any exclusive development and commercialization rights involving OCA in the United States and Canada to a third party, we must first engage in good faith negotiations with Sumitomo Dainippon with respect to the grant to Sumitomo Dainippon of exclusive rights to develop and commercialize OCA in such countries. In May 2014, Sumitomo Dainippon exercised its option to add Korea to its licensed territories.

Sumitomo Dainippon made up-front payments to us in the amount of \$16.0 million, including \$1.0 million upon the exercise of its option to add Korea to its licensed territories. In addition, Sumitomo Dainippon may be required to pay us up to an aggregate of approximately \$30.0 million for the achievement of development milestones, \$70.0 million for the achievement of regulatory approval milestones and \$200.0 million for the achievement of sales milestones based on aggregate sales amounts. As of December 31, 2016, we had achieved \$6.0 million of the development and regulatory milestones under our collaboration agreement with Sumitomo Dainippon. Sumitomo Dainippon is also obligated to pay us tiered royalties ranging from the tens to the twenties in percent based on net sales of OCA products in Japan and the other Asian countries covered by this agreement. The term of the agreement, and Sumitomo Dainippon's obligation to pay royalties to us for each OCA product, expires on a country-by-country basis on the later of the expiration of the exclusivity period in such country, whether through the expiration of applicable patents or the introduction of generic drugs that compete with the OCA product, or ten years after the first commercial sale of such OCA product for the first or second indication in that country. Royalty rates are subject to reduction under the agreement in specified circumstances, including, with respect to any country in the exclusive territory, if sales of generic products reach a certain threshold market share in that country over a specified period.

Sumitomo Dainippon may terminate the agreement in its entirety or on a country-by-country or indication-by-indication basis upon 90 days' written notice. Either we or Sumitomo Dainippon may terminate the agreement in the event of the uncured material breach by or bankruptcy of the other party, subject to certain dispute resolution procedures. If Sumitomo Dainippon were to terminate the agreement for our material breach, it would have a perpetual license following the effective date of termination, subject to the payment by Sumitomo Dainippon of a royalty based on net sales of OCA products, the amount of which will depend on whether the effective date of termination occurs prior to or after the date of first commercial sale of

## TABLE OF CONTENTS

an OCA product. If we were to terminate the agreement for Sumitomo Dainippon's material breach or if Sumitomo Dainippon were to voluntarily terminate the agreement, Sumitomo Dainippon's license under the agreement would terminate.

### **Competition**

The biopharmaceutical industry is characterized by intense competition and rapid innovation. Although we believe that we hold a leading position in bile acid chemistry, our competitors may be able to develop other compounds or drugs that are able to achieve similar or better results. Our potential competitors include major multinational pharmaceutical companies, established biotechnology companies, specialty pharmaceutical companies and universities and other research institutions. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. We believe the key competitive factors that will affect the development and commercial success of our product candidates are efficacy, safety and tolerability profile, reliability, convenience of dosing, price, the level of generic competition and reimbursement.

OCA is an FXR agonist. We are aware of other companies, including Novartis International AG, Gilead Sciences, Inc., Allergan Plc, Enanta Pharmaceuticals, Inc., ENYO Pharma SAS and Metacrine, Inc., that have FXR agonists in Phase 2 or earlier stages of clinical or preclinical development that could be used to treat PBC, NASH and the other liver diseases we are targeting.

OCA is marketed in the United States and Europe under the brand name Ocaliva as a second line treatment for PBC where ursodiol is the only therapy that is approved for treatment and is generically available at a significantly lower cost than branded products. While fibrates are not approved for use in PBC, off-label use of fibrate drugs has been reported, though many fibrates are specifically contraindicated for use in PBC due to potential concerns over acute and long-term safety in this patient population. Ongoing Phase 3 clinical trials for the treatment of PBC include an investigator-sponsored trial of bezafibrate, a fibrate that has not been approved for commercialization by the FDA and is only available outside of the United States, and a combination of ursodiol and budesonide, a steroid, sponsored by Dr. Falk Pharma GmbH. We are aware of several other companies that have FXR agonists in Phase 2 or earlier clinical or preclinical development for the treatment of PBC, including, FXR agonists from Novartis International AG (LJN452), Gilead Sciences, Inc. (GS-9674) and Enanta Pharmaceuticals, Inc. (EDP-305). Additional product candidates in Phase 2 or earlier clinical or preclinical development for the treatment of PBC include Genfit SA's dual PPAR alpha/delta agonist (elafibranor), Cymabay Therapeutics, Inc.'s PPAR delta agonist (MBX-8025), Bristol-Myers Squibb's marketed anti-CTL4 fusion protein (abatacept), and FF Pharmaceuticals' anti-CD40 monoclonal antibody (FFP104). Additionally, several companies have product candidates aimed at the cholestatic-induced pruritus associated with PBC, including apical sodium dependent bile acid transport inhibitors being developed by GlaxoSmithKline (GSK2330672).

There are currently no therapeutic products approved for the treatment of NASH, NAFLD, portal hypertension, complications of cirrhosis or alcoholic hepatitis. There are several marketed therapeutics that are currently used off-label for the treatment of NASH, such as vitamin E (an antioxidant), insulin sensitizers (e.g., metformin), antihyperlipidemic agents (e.g., gemfibrozil), pentoxifylline and ursodiol, but none has been clearly shown in clinical trials to show a significant reversal in liver fibrosis. Ongoing and announced Phase 3 clinical trials for the treatment of NASH include Genfit SA's PPAR alpha/delta agonist (elafibranor), Gilead Sciences, Inc.'s ASK-1 inhibitor (GS-4997) and Allergan's dual CCR2 and CCR5 inhibitor (cenicriviroc). We are aware of several other companies that have FXR agonists in Phase 2 or earlier clinical or preclinical development for the treatment of NASH, including, FXR agonists from Novartis International AG (LJN452), Gilead Sciences, Inc. (GS-9674) and Enanta Pharmaceuticals, Inc. (EDP-305). Additional product candidates in Phase 2 or earlier clinical or preclinical development for the treatment of PBC include Bristol-Myers Squibb Co., Novo Nordisk A/S, Conatus Pharmaceuticals Inc., Cemptra Pharmaceuticals, Cymabay Therapeutics, Inc., Islet Sciences, Inc., Galectin Therapeutics Inc., Zydus Pharmaceuticals Inc., NGM Biopharmaceuticals Inc., Galmed Medical Research Ltd., MediciNova, Inc., Ionis Pharmaceuticals, Inc., FibroGen, Inc., Viking Therapeutics, Inc., AstraZeneca plc, Durect Corporation, Immuron Ltd., Boehringer Ingelheim GmbH, MiNA Therapeutics, NuSirt Biopharma, Inc., Protalix Biotherapeutics, and Medivation, Inc. While there is no approved treatment for PSC, ursodiol is often prescribed off-label for PSC patients. We are aware of several companies that have product candidates in Phase 2 clinical or earlier stage preclinical

## TABLE OF CONTENTS

development for the treatment of PSC, including Allergan Plc, Biotie Therapies Corp. (acquired by Acorda Therapeutics, Inc.), Dr. Falk Pharma GmbH, Gilead Sciences, Inc. and Shire plc.

We believe that OCA offers key potential advantages over ursodiol and other products in development that could enable OCA, if approved for these indications, to capture meaningful market share. However, many of our potential competitors have substantially greater financial, technical and human resources than we do, as well as greater experience in the discovery and development of product candidates, obtaining FDA and other regulatory approvals of products and the commercialization of those products. Accordingly, our competitors may be more successful than us in obtaining approval from the FDA or from other regulators for drugs and achieving widespread market acceptance. Our competitors' drugs may be more effective, or more effectively marketed and sold, than any product candidate we may commercialize and may render our product candidates obsolete or non-competitive before we can recover the expenses of their development and commercialization. We anticipate that we will face intense and increasing competition as new drugs enter the market and other advanced technologies become available. Finally, the development of new treatment methods for the diseases we are targeting could render our product candidates non-competitive or obsolete. NASH is a complex disease and it is unlikely that any one therapeutic option will be optimal for every NASH patient. In addition, our ability to compete may be affected because in many cases insurers or other third-party payors seek to encourage the use of generic products.

### **Intellectual Property**

The proprietary nature of, and protection for, our product candidates and our discovery programs, processes and know-how are important to our business. We have sought patent protection in the United States and internationally for OCA, INT-767 and INT-777, and our discovery programs, and other inventions to which we have rights, where available and when appropriate. Our policy is to pursue, maintain and defend patent rights, whether developed internally or licensed from third parties, and to protect the technology, inventions and improvements that are commercially important to the development of our business. We also rely on trade secrets that may be important to the development of our business.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our current and future product candidates and the methods used to develop and manufacture them, as well as successfully defending these patents against third-party challenges. Our ability to stop third parties from making, using, selling, offering to sell or importing our products depends on the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities. We cannot be sure that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications filed by us in the future, nor can we be sure that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our product candidates, discovery programs and processes. For this and more comprehensive risks related to our intellectual property, please see Item 1A. "Risk Factors — Risks Relating to Our Intellectual Property."

### ***OCA (lead product candidate; FXR agonist)***

The patent portfolio for OCA contains patents and patent applications directed to compositions of matter, manufacturing methods, and methods of use. As of December 31, 2016, we owned eight U.S. patents, nine pending U.S. patent applications, and corresponding foreign patents and patent applications. Foreign patents have been granted in 30 European countries as well as Australia, Canada, China, India, Israel, Japan, and Macao. We expect the composition of matter patents, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2022 (worldwide) at the soonest and 2033 at the latest. In conjunction with the accelerated approval of Ocaliva in the United States, we have applied to extend the 2022 expiration date of the composition of matter patent in the United States by five additional years under the provisions of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act. We have also made a similar application in Europe in conjunction with the conditional approval of Ocaliva for a supplementary protection certificate to extend the composition of matter patent in Europe by five additional years. Patent term extension may be available in certain foreign countries upon regulatory approval. We expect the other patents in the portfolio, if the appropriate maintenance, renewal, annuity, or other governmental fees are paid, to expire from 2022 to 2033.

## TABLE OF CONTENTS

### ***INT-767 (dual FXR/TGR5 agonist)***

The patent portfolio for INT-767 contains patents and patent applications directed to compositions of matter and methods of use. As of December 31, 2016, we owned three U.S. patents, three pending U.S. patent applications, and corresponding foreign patents and patent applications. Foreign patents have been granted in Australia, Canada, China, 32 European countries as well as Hong Kong, India, Israel and Japan. We expect the issued composition of matter patent in the United States, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2029. It is possible that the term of the composition of matter patent in the United States may be extended up to five additional years under the provisions of the Hatch-Waxman Act. We expect the foreign composition of matter patents, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2027. Patent term extension may be available in certain foreign countries upon regulatory approval. We expect the other patents in the portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire from 2027 to 2029. We have received assignments of rights to the INT-767 patent portfolio from all inventors, with the exception of one inventor. That inventor is contractually obligated to provide an assignment to us. Thus, we believe that we are the owner of the INT-767 patent portfolio by virtue of this contractual obligation and the patent assignments we have received.

### ***INT-777 (TGR5 agonist)***

The patent portfolio for INT-777 contains patents and patent applications directed to compositions of matter and methods of use. As of December 31, 2016, we owned four U.S. patents, two pending U.S. patent applications, and corresponding foreign patents and patent applications. Foreign patents have been granted in Australia, China, 9 Eurasian countries, 30 European countries, Hong Kong, Israel, Japan, Macao, Mexico, Singapore, South Korea, and South Africa. We expect the composition of matter patent in the United States, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2030. It is possible that the term of the composition of matter patent in the United States may be extended up to five additional years under the provisions of the Hatch-Waxman Act. We expect the foreign composition of matter patents, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire beginning in 2028. Patent term extension may be available in certain foreign countries upon regulatory approval. We expect the other patents in the portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire from 2028 to 2030.

### ***Trade Secrets***

In addition to patents, we rely on trade secrets and know-how to develop and maintain our competitive position. Trade secrets and know-how can be difficult to protect. We seek to protect our proprietary processes, in part, by confidentiality agreements and invention assignment agreements with our employees, consultants, scientific advisors, contractors and commercial partners. These agreements are designed to protect our proprietary information. We also seek to preserve the integrity and confidentiality of our data, trade secrets and know-how by maintaining physical security of our premises and physical and electronic security of our information technology systems.

### ***Manufacturing***

We do not own or operate manufacturing facilities for the production of Ocaliva or any of our product candidates, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently rely on third-party contract manufacturers for all of our required raw materials, active pharmaceutical ingredient, or API, and finished product for commercial sales and for our clinical trials and preclinical studies.

We currently have a commercial manufacturing and supply agreement with PharmaZell GMBH for the API used in Ocaliva and are currently seeking to qualify one or more back-up API manufacturers. We do not have any current contractual relationships for the manufacture of commercial supplies of any of our products or product candidates other than OCA. We currently obtain these supplies and services from our third-party contract manufacturers on a purchase order basis. We intend to enter into agreements with a third-party contract manufacturer and one or more back-up manufacturers for the commercial production of those product candidates.

## TABLE OF CONTENTS

Contract manufacturers are subject to extensive governmental regulation and we depend on them to manufacture Ocaliva and our product candidates in accordance with applicable current good manufacturing practice regulations or cGMPs. Development and commercial quantities of any products that we develop will need to be manufactured in facilities, and by processes, that comply with the requirements of the FDA, EMA and the regulatory agencies of other jurisdictions in which we are seeking approval. We currently employ internal resources to manage our manufacturing contractors.

### **Government Regulation and Product Approval**

Government authorities in the United States, at the federal, state and local level, and analogous authorities in other countries extensively regulate, among other things, the research, development, testing, manufacture, labeling, packaging, promotion, storage, advertising, distribution, marketing and export and import of products such as Ocaliva and those we are developing. Our product candidates must be approved by the FDA through the NDA process before they may be legally marketed in the United States and by the European Commission following a favorable assessment provided by the EMA through the MAA process for a product falling within the scope of the Centralized procedure or a national MAA process (albeit through the process of Mutual Recognition or Decentralized procedure) before they may be legally marketed in the European Union. Our product candidates will be subject to similar requirements in other countries prior to marketing in those countries. The process of obtaining regulatory approvals and the subsequent compliance with applicable federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources.

#### ***United States Government Regulation***

##### *NDA Approval Processes*

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or the FDCA, and implementing regulations. An applicant seeking approval to market and distribute a new drug product in the United States must typically undertake the following:

- completion of preclinical laboratory tests, animal studies and formulation studies in compliance with the FDA's good laboratory practice, or GLP, regulations;
- submission to the FDA of an IND, which must take effect before human clinical trials may begin;
- approval by an independent institutional review board, or IRB, representing each clinical site before each clinical trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with good clinical practices, or GCP, to establish the safety and efficacy of the proposed drug product for each indication;
- preparation and submission to the FDA of an NDA;
- review of the product by an FDA advisory committee, where appropriate or if applicable;
- satisfactory completion of one or more FDA inspections of the manufacturing facility or facilities at which the product, or components thereof, are produced to assess compliance with current Good Manufacturing Practices, or cGMP, requirements and to assure that the facilities, methods and controls are adequate to preserve the product's identity, strength, quality and purity;
- satisfactory completion of FDA audits of clinical trial sites to assure compliance with GCP and the integrity of the clinical data;
- payment of user fees and securing FDA approval of the NDA; and
- compliance with any post-approval requirements, including Risk Evaluation and Mitigation Strategies, or REMS, and post-approval outcomes studies required by the FDA.

## TABLE OF CONTENTS

Once a pharmaceutical candidate is identified for development, it enters the preclinical or nonclinical testing stage. Nonclinical tests include laboratory evaluations of product chemistry, toxicity and formulation, as well as animal studies. An IND sponsor must submit the results of the nonclinical tests, together with manufacturing information and analytical data, to the FDA as part of the IND. Some nonclinical testing may continue even after the IND is submitted. In addition to including the results of the nonclinical studies, the IND will also include a protocol detailing parameters to be used in monitoring safety and the effectiveness criteria to be evaluated if the first phase lends itself to an efficacy determination. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, places the IND on clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can begin. A clinical hold may occur at any time during the life of an IND, and may affect one or more specific studies or all studies conducted under the IND.

All clinical trials must be conducted under the supervision of one or more qualified investigators in accordance with GCPs. They must be conducted under protocols detailing the objectives of the trial, dosing procedures, research subject selection and exclusion criteria and the safety and effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND, and progress reports detailing the status of the clinical trials must be submitted to the FDA annually. Sponsors also must timely report to FDA serious and unexpected adverse reactions, any clinically important increase in the rate of a serious suspected adverse reaction over that listed in the protocol or investigation brochure, or any findings from other studies or animal or in vitro testing that suggest a significant risk in humans exposed to the drug. An IRB at each institution participating in the clinical trial must review and approve the protocol before a clinical trial commences at that institution and must also approve the information regarding the trial and the consent form that must be provided to each research subject or the subject's legal representative, monitor the study until completed and otherwise comply with IRB regulations.

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

- *Phase 1.* The drug is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and elimination. In the case of some products for severe or life-threatening diseases, such as cancer, especially when the product may be inherently too toxic to ethically administer to healthy volunteers, the initial human testing is often conducted in patients.
- *Phase 2.* Clinical trials are performed on a limited patient population intended to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage.
- *Phase 3.* Clinical trials are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical study sites. These studies are intended to establish the overall risk-benefit ratio of the product and provide an adequate basis for product labeling.

Human clinical trials are inherently uncertain and Phase 1, Phase 2 and Phase 3 testing may not be successfully completed. The FDA or the sponsor may suspend a clinical trial at any time for a variety of reasons, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients. In some cases, clinical trials are overseen by an independent group of qualified experts organized by the trial sponsor, or the clinical monitoring board or data safety monitoring board, or DSMB. This group provides authorization for whether or not a trial may move forward at designated check points. These decisions are based on the limited access to data from the ongoing trial.

Sponsors of clinical trials of certain FDA-regulated products, including prescription drugs, are required to register and disclose clinical trial information related to the product, patient population, phase of investigation, clinical trial sites and investigator, and other aspects of the clinical trial on a public website maintained by the U.S. National Institutes of Health. Sponsors are also obligated to disclose the results of these clinical trials after completion. Disclosure of the results of these clinical trials can be delayed until the product or new

## TABLE OF CONTENTS

indication being studied has been approved. Competitors may use this publicly-available information to gain knowledge regarding the design and progress of our development programs.

During the development of a new drug, sponsors are given opportunities to meet with the FDA at certain points. These points may be prior to the submission of an IND, at the end of Phase 2 and before an NDA is submitted. Meetings at other times may be requested. These meetings can provide an opportunity for the sponsor to share information about the data gathered to date and for the FDA to provide advice on the next phase of development. Sponsors typically use the meeting at the end of Phase 2 to discuss their Phase 2 clinical results and present their plans for the pivotal Phase 3 clinical trial that they believe will support the approval of the new drug. If a Phase 2 clinical trial is the subject of discussion at the end of Phase 2 meeting with the FDA, a sponsor may be able to request a special protocol assessment, or SPA, the purpose of which is to reach agreement with the FDA on the Phase 3 clinical trial protocol design and analysis that will form the primary basis of an efficacy claim.

According to published guidance on the SPA process, a sponsor which meets the prerequisites may make a specific request for an SPA and provide information regarding the design and size of the proposed clinical trial. The FDA is supposed to evaluate the protocol within 45 days of the request to assess whether the proposed trial is adequate, and that evaluation may result in discussions and a request for additional information. An SPA request must be made before the proposed trial begins, and all open issues must be resolved before the trial begins. If a written agreement is reached, it will be documented and made part of the record. The agreement will be binding on the FDA and may not be changed by the sponsor or the FDA after the trial begins except with the written agreement of the sponsor and the FDA or if the FDA determines that a substantial scientific issue essential to determining the safety or efficacy of the drug was identified after the testing began.

Concurrent with clinical trials, sponsors usually complete additional animal safety studies and also develop additional information about the chemistry and physical characteristics of the drug and finalize a process for manufacturing commercial quantities of the product in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the drug and the manufacturer must develop methods for testing the quality, purity and potency of the drug. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the drug candidate does not undergo unacceptable deterioration over its proposed shelf-life.

The results of product development, nonclinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests and other control mechanisms, proposed labeling and other relevant information are submitted to the FDA as part of an NDA requesting approval to market the product. The submission of an NDA or a supplemental NDA is subject to the payment of user fees, but a waiver of such fees may be obtained under specified circumstances. Currently, the application fee is approximately \$2.0 million for NDAs with clinical information and approximately \$1.0 million for supplemental NDAs with clinical information. The manufacturer and/or sponsor under an approved NDA is also subject to annual product and establishment user fees, currently \$97,750 per product and \$512,200 per establishment. These fees are typically modified annually. The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. It may request additional information rather than accept an NDA for filing. In this event, the NDA must be resubmitted with the additional information. The resubmitted application also is subject to review before the FDA accepts it for filing.

Once the submission is accepted for filing, the FDA begins an in-depth review. NDAs receive either standard or priority review. A drug representing a significant improvement over available therapies in treatment, prevention or diagnosis of disease may receive priority review. The FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical or other data. Even if such data are submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant. The FDA may refer the NDA to an advisory committee for review and recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendation of an advisory committee, but it

## TABLE OF CONTENTS

generally follows such recommendations. Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured and tested.

### *Fast Track, Breakthrough Therapy, Priority Review and Accelerated Approval*

The FDA is authorized to designate certain products for expedited review if they are intended to address an unmet medical need in the treatment of a serious or life-threatening disease or condition. These programs are fast track designation, breakthrough therapy designation and priority review designation.

Specifically, the FDA may designate a product for fast track review if it is intended, whether alone or in combination with one or more other drugs, for the treatment of a serious or life-threatening disease or condition, and it demonstrates the potential to address unmet medical needs for such a disease or condition. For fast track products, sponsors may have greater interactions with the FDA and the FDA may initiate review of sections of a fast track product's NDA before the application is complete.

A product may also be designated as a breakthrough therapy if it is intended, either alone or in combination with one or more other drugs, to treat a serious or life-threatening disease or condition and preliminary clinical evidence indicates that the product may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. The FDA may take certain actions with respect to breakthrough therapies, including holding meetings with the sponsor throughout the development process; providing timely advice to the product sponsor regarding development and approval; involving more senior staff in the review process; assigning a cross-disciplinary project lead for the review team; and taking other steps to design the clinical trials in an efficient manner. In January 2015, OCA received breakthrough therapy designation from the FDA for the treatment of NASH patients with liver fibrosis.

The FDA may also designate a product for priority review if it is a drug that treats a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. The FDA determines, on a case-by-case basis, whether the proposed drug represents a significant improvement when compared with other available therapies. A priority designation is intended to direct overall attention and resources to the evaluation of such applications, and to shorten the FDA's goal for taking action on a marketing application from ten months to six months.

In addition, the FDA may grant accelerated approval to a drug for a serious or life-threatening condition that provides meaningful therapeutic advantage to patients over existing treatments based upon a determination that the drug has an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit. The FDA may also grant accelerated approval for such a condition when the product has an effect on an intermediate clinical endpoint that can be measured earlier than an effect on irreversible morbidity or mortality, or IMM, and that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit, taking into account the severity, rarity, or prevalence of the condition and the availability or lack of alternative treatments. Drugs granted accelerated approval must meet the same statutory standards for safety and effectiveness as those granted traditional approval. In the case of unprecedented accelerated approval endpoints, this determination occurs during the review of the NDA. Unless otherwise informed by the FDA, an applicant must submit to the FDA for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the FDA, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

As a condition of approval, the FDA may require that a sponsor of a drug receiving accelerated approval perform adequate and well-controlled post-marketing clinical trials. Approval of a drug may be withdrawn if trials fail to verify clinical benefit or do not demonstrate sufficient clinical benefit to justify the risks associated with the drug (e.g., show a significantly smaller magnitude or duration of benefit than was anticipated based on the observed effect on the surrogate).

Ocaliva was granted fast track designation by the FDA for the treatment of patients with PBC who have an inadequate response to or are intolerant of ursodiol. In August 2015, the FDA accepted for review our

## TABLE OF CONTENTS

NDA and granted priority review for Ocaliva in PBC. On May 27, 2016, Ocaliva was approved under the accelerated approval pathway in the United States.

### *Post-approval Requirements*

Drugs manufactured or distributed pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to recordkeeping, periodic reporting, product sampling and distribution, advertising and promotion and reporting of adverse experiences with the product. Once an approval is granted, the FDA may withdraw the approval if compliance with regulatory requirements is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. After approval, some types of changes to the approved product, such as adding new indications, manufacturing changes and additional labeling claims, are subject to further FDA review and approval. In addition, the FDA may require testing and surveillance programs to monitor the effect of approved products that have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs.

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

Failure to comply with the applicable U.S. requirements at any time during the product development process or approval process, or after approval, may subject us to administrative or judicial sanctions, any of which could have a material adverse effect on us.

These sanctions could include:

- refusal to approve pending applications;
- withdrawal of an approval;
- imposition of a clinical hold;
- warning letters;
- product seizures;
- total or partial suspension of production or distribution; or
- injunctions, fines, disgorgement, or civil or criminal penalties.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability. Additional regulations apply for advertising and promotion of products approved under the accelerated approval pathway. Unless otherwise informed by the FDA, an applicant must submit to the FDA for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the FDA, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

## TABLE OF CONTENTS

We rely, and expect to continue to rely, on third parties for the production of clinical and commercial quantities of our products. Future FDA and state inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution, or require substantial resources to correct.

From time to time, legislation is drafted, introduced and passed in Congress that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. In addition, FDA regulations and guidance are often revised or reinterpreted by the agency in ways that may significantly affect our business and our products. It is impossible to predict whether legislative changes will be enacted, or FDA regulations, guidance or interpretations changed or what the impact of such changes, if any, may be.

In accordance with the applicable requirements under the accelerated approval pathway, we initiated our Phase 4 COBALT clinical outcomes confirmatory trial for Ocaliva in PBC in December 2014, following discussions with the FDA. COBALT will be completed on a post-marketing basis. As part of the post-marketing requirements, we are discussing modifications to the COBALT trial to potentially include a broader cross-section of PBC patients with early, moderately advanced and advanced disease according to the so-called Rotterdam criteria. We have agreed to evaluate the safety and efficacy of Ocaliva in patients with moderate to severe hepatic impairment and as monotherapy in patients with PBC. Finally, we have also agreed to develop and characterize a lower dose formulation of Ocaliva to allow for once daily dosing in patients with moderate or advanced hepatic impairment.

### *Risk Evaluation and Mitigation Strategy*

The Food and Drug Administration Amendments Act of 2007, or FDAAA, created a new section of the FDCA which authorizes the FDA to require a REMS when necessary to ensure that the benefits of a drug outweigh the risks. Under a REMS, the FDA may require various measures to address serious risks, such as training or registries, as well as steps to monitor and assess the effectiveness of those measures. Such requirements may impose significant burdens on prescribers, pharmacists or patients.

We do not have a REMS for Ocaliva for the treatment of PBC.

### *Patent Term Extension and Data Exclusivity*

Depending upon the timing, duration and specifics of FDA approval of the use of our drug candidates, some of our U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Act. The Hatch-Waxman Act permits an extension patent term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, the extension of patent term cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term extension period is generally one-half the time between the effective date of an IND, and the submission date of an NDA, plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension and the application for extension must be made prior to expiration of the patent. The United States Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In conjunction with the accelerated approval of Ocaliva in the United States, we have applied to extend the 2022 expiration date of the OCA composition of matter patent in the United States by five additional years under the provisions of the Hatch-Waxman Act. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration date, depending on the expected length of clinical trials and other factors involved in the submission of the relevant NDA.

Data exclusivity provisions under the FDCA also can delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent data exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application, or ANDA. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement. The FDCA also

## TABLE OF CONTENTS

provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA or supplement to an approved NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example, for new indications, dosages or strengths of an existing drug. This three-year exclusivity covers only the conditions associated with the new clinical investigations and does not prohibit the FDA from approving ANDAs for drugs containing the original active agent for other conditions of use. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA; however, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the preclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness.

### *Pediatric Exclusivity and Pediatric Use*

Under the Best Pharmaceuticals for Children Act, or BPCA, certain drugs may obtain an additional six months of exclusivity, if the sponsor submits information requested in writing by the FDA, or a Written Request, relating to the use of the active moiety of the drug in children. The FDA may not issue a Written Request for studies on unapproved or approved indications or where it determines that information relating to the use of a drug in a pediatric population, or part of the pediatric population, may not produce health benefits in that population.

We have not received a Written Request for such pediatric studies, although we may ask the FDA to issue a Written Request for such studies in the future. To receive the six-month pediatric market exclusivity, we would have to receive a Written Request from the FDA, conduct the requested studies in accordance with a written agreement with the FDA or, if there is no written agreement, in accordance with commonly accepted scientific principles, and submit reports of the studies. A Written Request may include studies for indications that are not currently in the labeling if the FDA determines that such information will benefit the public health. The FDA will accept the reports upon its determination that the studies were conducted in accordance with and are responsive to the original Written Request or commonly accepted scientific principles, as appropriate, and that the reports comply with the FDA's filing requirements.

In addition, the Pediatric Research Equity Act, or PREA, specifies that all applications for new active ingredients, new indications, new dosage forms, new dosing regimens or new routes of administration are required to contain an assessment of safety and effectiveness of the product for the claimed indication(s) in pediatric patients unless this requirement is waived, deferred or inapplicable. Under PREA, original NDAs, biologics license application and supplements thereto, must contain a pediatric assessment unless the sponsor has received a deferral or waiver. Products with orphan designation are exempt from PREA requirements. The required assessment must assess the safety and effectiveness of the product for the claimed indications in all relevant pediatric subpopulations and support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The sponsor or FDA may request a deferral of pediatric studies for some or all of the pediatric subpopulations. A deferral may be granted for several reasons, including a finding that the drug or biologic is ready for approval for use in adults before pediatric studies are complete or that additional safety or effectiveness data needs to be collected before the pediatric studies begin. After April 2013, the FDA must send a non-compliance letter as applicable to any sponsor that fails to submit the required assessment, keep a deferral current or fails to submit a request for approval of a pediatric formulation. OCA received orphan drug designation for treatment of PBC and is, therefore, exempt from the PREA requirements for this indication.

### *Regulation Outside of the United States*

In addition to regulations in the United States, we will be subject to regulations of other countries governing clinical trials and commercial sales and distribution of our products. Whether or not we obtain FDA approval for a product, we must obtain approval by the comparable regulatory authorities of countries outside of the United States before we can commence clinical trials in such countries and approval of the regulators of such countries or economic areas, such as the European Union, before we may market products in those countries or areas. The approval process and requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from place to place, and the time may be longer or shorter than that required for FDA approval.

## TABLE OF CONTENTS

Under European Union regulatory systems, a company may submit marketing authorization applications under a centralized, decentralized or mutual recognition marketing authorization procedure. The centralized procedure provides for the grant of a single marketing authorization for a medicinal product by the European Commission on the basis of an opinion by the EMA's Committee for Human Medicinal Products for Human Use (CHMP). A centralized marketing authorization is valid for all European Union member states and the European Economic Area States (Iceland, Liechtenstein and Norway). The decentralized marketing authorization procedure involves the submission of an application for marketing authorization to the competent authorities in each of the European Union member states chosen by the applicant in which the product is to be marketed. One national competent authority, selected by the applicant (Reference Member State) leads the assessment of the application for marketing authorization. The competent authorities of the other chosen European Union member states concerned by the procedure (Concerned Member States) are subsequently required to review the initial evaluation and, if the assessment is positive and all issues are resolved, grant marketing authorization for their territory on the basis of this assessment, except where grounds of potential serious risk to public health require this application for authorization to be refused. The mutual recognition procedure provides for mutual recognition of a marketing authorization which has already been granted by the national competent authority of a European Union member state by the competent authorities of the other European Union member states where further marketing authorizations are progressively sought. The holder of a national marketing authorization may submit an application to the competent authority of a European Union member state requesting that this authority recognize the marketing authorization granted by the competent authority of another European Union member state.

Prior to obtaining a marketing authorization in the European Union, applicants have to demonstrate compliance with all measures included in an EMA-approved Pediatric Investigation Plan, or PIP, covering all subsets of the pediatric population, unless the EMA has granted (1) a product-specific waiver, (2) a class waiver, or (3) a deferral for one or more of the measures included in the PIP. In the case of orphan medicinal products, completion of an approved PIP can result in an extension of the aforementioned market exclusivity period from ten to twelve years.

It is also possible that a marketing authorization from the EMA could be conditional on post-approval studies and not considered a full approval. A manufacturer's ability to obtain and maintain conditional marketing authorization in the European Union will be limited to specific circumstances and subject to several conditions and obligations, if obtained at all. Conditional marketing authorizations can be granted, based on a clinical dataset that is not comprehensive. Granting of such an authorization may be granted for a limited number of medicinal products for human use referenced in the applicable European Union law governing conditional marketing authorization, including products designated as orphan medicinal products under European Union law, if (1) the risk-benefit balance of the product is positive, (2) it is likely that the applicant will be in a position to provide the required comprehensive clinical trial data, (3) unmet medical needs will be fulfilled and (4) the benefit to public health of the immediate availability on the market of the medicinal product outweighs the risk inherent in the fact that additional data are still required. Specific obligations, including with respect to the completion of ongoing or new studies, and with respect to the collection of pharmacovigilance data, may be specified in the conditional marketing authorization. Conditional marketing authorizations are valid for one year, and may be renewed annually, if the risk-benefit balance remains positive, and after an assessment of the need for additional or modified conditions.

Similarly to the United States, both marketing authorization holders and manufacturers of medicinal products are subject to comprehensive regulatory oversight by the EMA and the competent authorities of the individual European Union member states both before and after grant of the manufacturing and marketing authorizations. This includes European Union GMP rules, which govern quality control of the manufacturing process and require documentation policies and procedures. We and our third party manufacturers are required to ensure that all of our processes, methods, and equipment are compliant with GMP.

Failure by us or by any of our third party partners, including suppliers, manufacturers, and distributors to comply with European Union laws and the related national laws of individual European Union member states governing the conduct of clinical trials, manufacturing approval, marketing authorization of medicinal products and manufacturing and marketing of such products, both before and after grant of marketing authorization, may result in administrative, civil or criminal penalties. These penalties could include delays or refusal to

## TABLE OF CONTENTS

authorize the conduct of clinical trials or to grant marketing authorization, product withdrawals and recalls, product seizures, suspension, withdrawal, or variation of the marketing authorization, total or partial suspension of production, distribution, manufacturing, or clinical trials, operating restrictions, injunctions, suspension of licenses, fines and criminal penalties.

In October 2016, the Committee for Medicinal Products for Human Use, or CHMP, of the EMA adopted a positive opinion recommending the granting of a conditional marketing authorization of Ocaliva in PBC. Based on the CHMP's positive recommendation, the European Commission granted a conditional marketing authorization of Ocaliva in PBC in December 2016. PBC does not occur in the pediatric population. Therefore, in accordance with applicable regulations, this marketing authorization required demonstration of compliance with all measures included in an EMA-approved Pediatric Investigation Plan for OCA for the treatment of biliary atresia, a pediatric cholestatic disease.

### ***Orphan Drug Designation***

Under the Orphan Drug Act, the FDA may grant orphan drug designation to drugs intended to treat a rare disease or condition, which is generally a disease or condition that affects fewer than 200,000 individuals in the United States, or more than 200,000 individuals in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for this type of disease or condition will be recovered from sales in the United States for that drug. Orphan drug designation must be requested before submitting an NDA. After the FDA grants orphan drug designation, the identity of the therapeutic agent and its potential orphan use are disclosed publicly by the FDA. Orphan drug designation does not convey any advantage in or shorten the duration of the regulatory review and approval process.

If a product that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is entitled to orphan product exclusivity, which means that the FDA may not approve any other applications to market the same drug for the same indication, except in very limited circumstances, for seven years. Orphan drug exclusivity, however, could also block the approval of one of our products for seven years if a competitor obtains approval of the same drug as defined by the FDA or if our drug candidate is determined to be contained within the competitor's product for the same indication or disease. Competitors may receive approval of different products for the indication for which the orphan product has exclusivity and may obtain approval for the same product but for a different indication. If a drug or drug product designated as an orphan product ultimately receives marketing approval for an indication broader than what was designated in its orphan product application, it may not be entitled to exclusivity.

As in the United States, we may apply for designation of a product as an orphan drug for the treatment of a specific indication in the European Union before the application for marketing authorization is made. Orphan drugs in Europe enjoy economic and marketing benefits, including up to ten years of market exclusivity for the approved indication. The market exclusivity period for the authorized therapeutic indication may be reduced to six years if, at the end of the fifth year, it is established that the orphan designation criteria are no longer met, including where it is shown that the product is sufficiently profitable not to justify maintenance of market exclusivity. In addition, a competing similar medicinal product may in limited circumstances be authorized prior to the expiration of the market exclusivity period, including if it is shown to be safer, more effective or otherwise clinically superior to the orphan-designated product.

OCA has received orphan drug designation in the United States and the European Union for the treatment of PBC and PSC. Any of our orphan-designated products and product candidates can lose orphan designation, and the related benefits, if it is demonstrated that the orphan designation criteria are no longer met.

### ***Pricing and Reimbursement***

Sales of our products will depend, in part, on the extent to which the costs of our products will be covered by third-party payors, such as government health programs, commercial insurance plans and managed healthcare organizations. These third-party payors are increasingly challenging the prices charged for medical products and services. Additionally, the containment of healthcare costs has become a priority of federal and state governments and the prices of drugs have been a focus in this effort. The U.S. government, state legislatures and foreign governments have shown significant interest in implementing cost-containment programs, including price controls, restrictions on reimbursement and requirements for substitution of generic

## TABLE OF CONTENTS

products. Adoption of price controls and cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures, could further limit our net revenue and results. If these third-party payors do not consider our products to be effective (or cost-effective in some markets outside of the United States) compared to other therapies, they may not cover our products after approved as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

Medicare is a U.S. federal healthcare program that provides coverage for certain healthcare items and services to individuals aged 65 years or older, as well as individuals of any age with certain disabilities and illnesses. Medicare Part D may affect reimbursement of our products upon approval. Under Part D, Medicare beneficiaries may enroll in prescription drug plans offered by private entities which will provide coverage of outpatient prescription drugs. Part D plans include both stand-alone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans. Unlike Medicare Part A and B, Part D coverage is not standardized. Part D prescription drug plan sponsors are not required to pay for all covered outpatient drugs, and each Part D plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. However, Part D plan drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, though not necessarily all the drugs in each category or class. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Government payment for some of the costs of prescription drugs may increase demand for our products for which we receive marketing approval. However, any negotiated prices for our products covered by a Part D plan will likely be lower than the prices we might otherwise obtain. Moreover, while Part D provides prescription drug benefits only to Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment made by Medicare may result in a similar reduction in payments from non-governmental payors.

Medicaid is a government healthcare program that provides coverage for certain healthcare items and services to low-income children, families, pregnant women and people with disabilities. It is jointly funded by the federal and state governments, and it is administered by individual states with parameters established by the federal government. Therefore, coverage and reimbursement for drugs may vary by state Medicaid program. A manufacturer must enter into a Medicaid Rebate Agreement to have its products be eligible for coverage by Medicaid. Under the Medicaid program, and per the Medicaid Rebate Agreement, manufacturers agree to report certain prices to the government and pay rebates to state Medicaid programs based on Medicaid utilization of the manufacturer's covered drugs. In January 2016, the Centers for Medicare & Medicaid Services, or CMS, released a final rule impacting the calculation and reporting of prices by manufacturers under the Medicaid program. We continue to evaluate how this final rule may affect the reimbursement of our product candidate and rebates paid to state Medicaid programs.

Federal law requires any company that participates in the Medicaid Drug Rebate Program to also participate in the Public Health Service's 340B drug pricing program in order for federal funds to be available for the manufacturer's drugs under Medicaid. The 340B pricing program requires participating manufacturers to charge statutorily-defined covered entities no more than the 340B "ceiling price" for the manufacturer's covered outpatient drugs. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, collectively referred to as the ACA, extended eligibility to participate in the 340B pricing program to certain additional types of hospitals (including critical access hospitals, sole community hospitals, rural referral centers and freestanding cancer hospitals). However, for purposes of these newly eligible covered entities, the ACA specifically excluded from the definition of "covered outpatient drugs" certain drugs designated as "orphan drugs" under section 526 of the FDCA, such as our product candidate.

The ACA also improved the market for healthcare products in one respect, by expanding health insurance coverage. Starting in 2014, the ACA expanded health insurance coverage to many previously uninsured Americans, through a combination of federal subsidies for lower-income individuals who enrolled in health plans through health insurance Exchanges and enabling States to expand Medicaid eligibility with the federal government paying a high share of the cost. Following the November 2016 U.S. elections and the inauguration of the President, uncertainty exists about the future of this coverage expansion; the President and

## TABLE OF CONTENTS

congressional leaders have expressed interest in repealing these ACA provisions and replacing them with alternatives that may be less costly and provide state Medicaid programs and private health plans more flexibility. It is possible that these repeal and replacement initiatives, if enacted into law, could ultimately result in fewer individuals having health insurance coverage and/or in individuals having insurance coverage with less generous benefits. The scope of potential future legislation to repeal and replace ACA provisions is highly uncertain in many respects, and it is possible that some of the ACA provisions that generally hurt the research-based pharmaceutical industry could also be repealed along with ACA coverage expansion provisions; however, at this time the coverage expansion provisions of the ACA appear most likely to be repealed and replaced.

The American Recovery and Reinvestment Act of 2009 provides funding for the federal government to compare the effectiveness of different treatments for the same illness. A plan for the research will be developed by the Department of Health and Human Services, the Agency for Healthcare Research and Quality and the National Institutes for Health, and periodic reports on the status of the research and related expenditures will be made to Congress. Although the results of the comparative effectiveness studies are not intended to mandate coverage policies for public or private payors, it is not clear what effect, if any, the research will have on the sales of any product, if any such product or the condition that it is intended to treat is the subject of a study. It is also possible that comparative effectiveness research demonstrating benefits in a competitor's product could adversely affect the sales of our product candidates. If third-party payors do not consider our products to be cost-effective compared to other available therapies, they may not cover our products as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

In addition, in some non-U.S. jurisdictions, the proposed pricing for a drug must be approved before its cost may be funded within the respective national healthcare systems. The requirements governing drug pricing vary widely from country to country. For example, EU member states can restrict the range of medicinal products for which their national health insurance systems provide reimbursement and may control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profits the medicinal product generates for the company placing it on the market. There can be no assurance that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our products on cost-effectiveness grounds. Historically, products launched in countries in the European Union do not follow price structures of the United States and generally their prices tend to be significantly lower.

### ***U.S. Fraud and Abuse Laws***

Any present or future arrangements with third-party payors, healthcare providers and professionals and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may restrict certain marketing and contracting practices. These laws include, and are not limited to, anti-kickback and false claims statutes.

The federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending, or arranging for any good or service, for which payment may be made under federal and state healthcare programs such as Medicare and Medicaid. Remuneration is not defined in the federal Anti-Kickback Statute and has been broadly interpreted to include anything of value, including for example, gifts, discounts, coupons, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests and providing anything at less than its fair market value. This statute has been broadly interpreted to apply to manufacturer arrangements with prescribers, purchasers and formulary managers, among others.

## TABLE OF CONTENTS

The federal False Claims Act imposes civil penalties, including through civil whistleblower or *qui tam* actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. The government and *qui tam* relators have brought False Claims Act actions against pharmaceutical companies on the theory that their practices have caused false claims to be presented to the government. There is also a separate false claims provision imposing criminal penalties.

Other federal healthcare fraud-related laws also provide criminal liability for violations. The Criminal Healthcare Fraud statute (18 U.S.C. §1347) prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payers. Federal criminal law at 18 U.S.C. §1001, among other sections, prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

### **Other Laws**

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes criminal liability for executing a scheme to defraud any healthcare benefit program and also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information.

HIPAA also imposes criminal liability for knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statements in connection with the delivery of or payment for healthcare benefits, items or services.

The federal Physician Payments Sunshine Act requirements under the ACA, and its implementing regulations, require manufacturers of drugs, devices, biologics and medical supplies to report to the Department of Health and Human Services information related to payments and other transfers of value made to covered recipients, such as physicians and teaching hospitals, and physician ownership and investment interests. Payments made to physicians and research institutions for clinical trials are included within the ambit of this law.

A number of states also have statutes or regulations similar to the federal Anti-Kickback Statute and False Claims Act that apply to items and services reimbursed under Medicaid and other state programs. Some state anti-kickback statutes apply not just to government payors, but to all payors, including commercial payors.

### **Employees**

As of December 31, 2016, we had 456 employees, including 169 in research and development, 137 in our commercial organization, 66 in our medical affairs group and 84 in general and administrative supporting functions. Geographically, 332 of our employees were based in the United States and 124 were based outside the United States. None of our employees are represented by a labor union and we consider our employee relations to be good.

### **Corporate Information**

We were incorporated in the State of Delaware on September 4, 2002. Our principal executive offices are located at 450 West 15<sup>th</sup> Street, Suite 505, New York, NY 10011, and our telephone number is (646) 747-1000. We also have administrative offices in San Diego, California and London, United Kingdom.

Our corporate website address is [www.interceptpharma.com](http://www.interceptpharma.com). Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, are available free of charge on our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. The Securities and Exchange Commission maintains an internet site that contains our public filings with the Securities and Exchange

## [TABLE OF CONTENTS](#)

Commission and other information regarding our company, at [www.sec.gov](http://www.sec.gov). These reports and other information concerning our company may also be accessed at the Securities and Exchange Commission's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. The contents of these websites are not incorporated into this Annual Report. Further, our references to the URLs for these websites are intended to be inactive textual reference only.

### **Legal Proceedings**

From time to time we are party to legal proceedings in the course of our business. We do not, however, expect any such pending legal proceedings to have a material adverse effect on our business, financial condition or results of operations.

## TABLE OF CONTENTS

### **Item 1A. Risk Factors**

*Except for the historical information contained herein, this Annual Report on Form 10-K contains forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results could differ materially from those discussed in this Annual Report on Form 10-K. Important factors that could cause or contribute to these differences include, but are not limited to, those discussed in the following section, as well as those discussed in Part II, Item 7 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere throughout this Annual Report on Form 10-K.*

*You should consider carefully the following risk factors, together with all of the other information included in this Annual Report on Form 10-K. If any of the following risks, either alone or taken together, or other risks not presently known to us or that we currently believe to not be significant, develop into actual events, then our business, financial condition, results of operations or prospects could be materially adversely affected. If that happens, the market price of our common stock could decline, and stockholders may lose all or part of their investment.*

#### **Risks Related to Our Financial Position and Need for Additional Capital**

***We are dependent on the successful commercialization of Ocaliva® (obeticholic acid or OCA), for primary biliary cholangitis, or PBC. To the extent Ocaliva is not commercially successful, our business, financial condition and results of operations may be materially adversely affected and the price of our common stock may decline.***

Ocaliva is our only drug that has been approved for sale and it has only been approved in the United States and the European Union for the treatment of PBC in combination with ursodiol in adults with an inadequate response to ursodiol or as monotherapy in adults unable to tolerate ursodiol.

Our ability to generate profits from operations and become profitable will depend on the success of commercial sales of Ocaliva. However, the successful commercialization of Ocaliva in PBC is subject to many risks. We are currently undertaking our first commercial launch with Ocaliva in PBC, and there is no guarantee that we will be able to do so successfully. There are numerous examples of unsuccessful product launches and failures to meet expectations of market potential, including by pharmaceutical companies with more experience and resources than us.

The commercial success of Ocaliva depends on the extent to which patients, physicians and payers accept and adopt Ocaliva as a treatment for PBC, and we do not know whether our or others' estimates in this regard will be accurate. While we continue to conduct various activities, such as profiling of our customers, to better understand how physicians care for PBC patients, PBC is an orphan disease in which Ocaliva represented the first new therapy in approximately 20 years. As such, there is significant uncertainty in the degree of market acceptance Ocaliva will have in PBC. For example, if the patient population suffering from PBC is smaller than we estimate, or even if the patient population matches our estimate but Ocaliva is not widely accepted as a treatment for PBC, the commercial potential of Ocaliva will be limited. Physicians may not prescribe Ocaliva and patients may be unwilling to use Ocaliva if coverage is not provided or reimbursement is inadequate to cover a significant portion of the cost. Additionally, the use of Ocaliva in a non-trial setting may result in the occurrence of unexpected or a greater incidence of side effects, adverse reactions or misuse that may negatively affect the commercial prospects of Ocaliva. Furthermore, any negative development in any other development program of OCA or our failure to satisfy the post-marketing regulatory commitments and requirements to which we are or may become subject, including potential modifications to and the completion of our Phase 4 COBALT trial, may adversely impact the commercial results and potential of Ocaliva.

As a result, we cannot foresee if Ocaliva will ever be accepted as a therapy in PBC that eventually results in revenues that can sustain operations. It may take the passage of a significant amount of time to generate sufficient revenues to sustain operations even if Ocaliva becomes accepted as a therapy in PBC. Furthermore, because Ocaliva is still undergoing regulatory review outside of the United States and European Union, we may not be able to commercialize Ocaliva in PBC in such other jurisdictions, which may also limit

## TABLE OF CONTENTS

our prospects. If the commercialization of Ocaliva for PBC is unsuccessful or perceived to be disappointing, the long-term prospects of Ocaliva and our company may be significantly harmed.

***We have never been profitable. We expect to incur losses for the foreseeable future, and we may never achieve or sustain profitability.***

We have never been profitable and do not expect to be profitable in the foreseeable future. We have incurred net losses of \$412.8 million, \$226.4 million and \$283.2 million for the years ended December 31, 2016, 2015 and 2014, respectively. To date, we have financed our operations primarily through public and private securities offerings and payments received under our licensing and collaboration agreements with Sumitomo Dainippon Pharma Co., Ltd., or Sumitomo Dainippon, and Les Laboratoires Servier and Institut de Recherches Servier, which are collectively referred to as Servier. At December 31, 2016, we had \$689.4 million in cash, cash equivalents and investment securities.

We have devoted substantially all of our resources to our development efforts relating to our product candidates, including conducting clinical trials of our product candidates, providing general and administrative support for these operations, protecting our intellectual property and engaging in activities to prepare for and commercially launch Ocaliva in PBC.

We expect to continue to incur losses for the foreseeable future, and we expect these losses to increase as we continue to commercialize Ocaliva for PBC in the United States and the European Union, seek regulatory approval for and prepare to commercially launch Ocaliva for PBC in other jurisdictions, develop and seek regulatory approvals for OCA in nonalcoholic steatohepatitis, or NASH, and other indications, and add infrastructure and personnel in the United States and internationally to support our product development and commercialization efforts and operations as a public company. We believe our prospects and ability to significantly grow revenues will be dependent on our ability to successfully develop and commercialize OCA for indications other than PBC such as NASH. As a result, we expect a significant amount of resources to continue to be devoted to our development programs for OCA.

As part of our product development activities, we anticipate that we will continue our Phase 4 COBALT trial of OCA in PBC including any modifications to the trial as may be agreed upon with regulatory authorities, continue our Phase 3 clinical program of OCA in NASH, including the Phase 3 REGENERATE trial in non-cirrhotic NASH patients with liver fibrosis, and continue our AESOP Phase 2 clinical trial of OCA for primary sclerosing cholangitis, or PSC. We also expect to continue the development of OCA in additional diseases, such as biliary atresia, a rare pediatric disease characterized by deficient bile duct development for which we initiated a Phase 2 trial in OCA called CARE. Our overall development program for OCA in NASH is expected to include a number of trials, such as a Phase 2 clinical trial, referred to as the CONTROL trial, to assess the lipid metabolic effects of OCA and the effects of concomitant statin administration in NASH patients. Furthermore, we recently completed a Phase 1 clinical trial for INT-767, an earlier stage product candidate, and we expect to incur further expenses as we continue to develop INT-767. Our expenses could increase if we are required by the U.S. Food and Drug Administration, or FDA, or the European Medicines Agency, or EMA, to perform studies or trials in addition to those currently expected, or if there are any delays in completing our clinical trials or the development of any of our product candidates.

If OCA or any of our other product candidates fails in clinical trials or does not gain regulatory approval, or if our product candidates do not achieve market acceptance, we may never become profitable. Our net losses and negative cash flows have had, and will continue to have, an adverse effect on our stockholders' equity and working capital. Because of the numerous risks and uncertainties associated with pharmaceutical product development and commercialization, we are unable to accurately predict the timing or amount of increased expenses or when, or if, we will be able to achieve profitability. The amount of future net losses will depend, in part, on the rate of future growth of our expenses and our ability to generate revenues.

***We will require substantial additional funding, which may not be available to us on acceptable terms, or at all, and, if not so available, may require us to delay, limit, reduce or cease our operations.***

We are currently advancing OCA through clinical development for multiple indications and other product candidates through various stages of clinical and preclinical development. Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is expensive.

## TABLE OF CONTENTS

In addition, subject to obtaining regulatory approval of any of our product candidates, we expect to incur significant commercialization expenses for product sales, marketing, manufacturing and distribution. We have incurred and anticipate incurring significant expenses as we continue to commercialize Ocaliva in PBC, including significant expenses relating to our sales, marketing, distribution and drug manufacturing activities. As part of our longer-term strategy, we also anticipate incurring expenses in connection with increases in our product development, scientific, commercial and administrative personnel and expansion of our facilities and infrastructure in the United States and abroad. We expect to incur additional costs associated with operating as a public company and further plan on expanding our operations in the United States, Europe and in certain other countries.

As of December 31, 2016, we had \$689.4 million in cash, cash equivalents and investment securities. We currently project adjusted operating expenses in the range of \$380 million to \$420 million in the fiscal year ending December 31, 2017, which excludes stock-based compensation and other non-cash items. These expenses are planned to support the continued commercialization of Ocaliva in PBC in the United States and other markets, continued clinical development for OCA in PBC and NASH and the continued development of INT-767 and our other earlier stage pipeline programs. We may make additional investments over 2017 as our business evolves. Accordingly, we will continue to require substantial additional capital in connection with our continuing operations, including continuing our clinical development and commercialization activities, despite having started to generate revenues from product sales. Because successful development and commercialization of our products and product candidates is uncertain, we are unable to estimate the actual funds required to complete the research and development and commercialization of our products and product candidates.

Adjusted operating expense is a financial measure not calculated in accordance with U.S. generally accepted accounting principles, or GAAP. We anticipate that stock-based compensation expense will represent the most significant non-cash item that is excluded in adjusted operating expenses as compared to operating expenses under GAAP. See “Non-GAAP Financial Measures” for more information.

Due to the many variables inherent to the development and commercialization of novel therapies, such as the risks described in this “Risk Factors” section of this annual report on Form 10-K, and our rapid growth and expansion, we currently cannot accurately or precisely predict the duration beyond mid-2018 over which we expect our cash and cash equivalents to be sufficient to fund our operating expenses and capital expenditure requirements. However, we currently believe that our cash and cash equivalents will be sufficient for us to:

- continue the initial commercialization of Ocaliva for PBC in the United States and the European Union;
- prepare for and initiate the commercial launch of Ocaliva in PBC in certain other target markets across the world, but not commercially launch Ocaliva in PBC in other non-target countries across the world;
- continue and expand our clinical development programs for OCA in PBC and NASH, such as continuing, but not completing, our planned Phase 3 clinical program for OCA in NASH, including the REGENERATE trial, and our ongoing COBALT confirmatory clinical outcomes trial of OCA in PBC; and
- advance the continued development of INT-767, for which we completed a Phase 1 clinical trial in 2016, and our preclinical compounds, but not completing the clinical or preclinical development needed to obtain regulatory approval for and commercialize INT-767 or our preclinical compounds.

Accordingly, we will continue to require substantial additional capital in connection with our continuing operations, including continuing our commercialization plans and our research and development activities and building our global infrastructure to support these activities.

## TABLE OF CONTENTS

The amount and timing of our future funding requirements will depend on many factors, including:

- the rate of progress and cost of our continued commercialization activities for Ocaliva in PBC in the United States and European Union;
- our ability to receive marketing approval of Ocaliva for PBC in countries outside of the United States and the European Union based on our regulatory submissions package and our work completed to date, including the willingness of the relevant regulatory authorities to accept the POISE trial, which is our completed Phase 3 clinical trial for PBC;
- the degree of effort and time needed to prepare for and initiate the commercial launches of Ocaliva in PBC outside of the United States and the European Union if we receive marketing authorization;
- the progress, costs, results of and timing of our clinical development programs for OCA in PBC, NASH and other indications, such as the sufficiency of the REGENERATE trial to be accepted as the sole pivotal trial for marketing approval or the acceptability of a surrogate endpoint for accelerated approval of OCA for the treatment of NASH and any modifications we may be required to make to the COBALT trial as part of our post-marketing requirements to the FDA or the EMA;
- the outcome, costs and timing of seeking and obtaining FDA, EMA and any other regulatory approvals;
- the expansion of our research and development activities and the product candidates that we pursue, including INT-767 and our product candidates in preclinical development such as INT-777;
- the expansion of our operations, personnel and the size of our company and our need to continue to expand in the longer term;
- the costs associated with securing and establishing manufacturing capabilities and procuring the materials necessary for our products and product candidates;
- market acceptance of our products and product candidates, which may be affected by reimbursement from payors;
- the costs of acquiring, licensing or investing in businesses, products, product candidates and technologies;
- our ability to maintain, expand and defend the scope of our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, defense and enforcement of any patents or other intellectual property rights;
- the effect of competing technological and market developments; and
- other cash needs that may arise as we continue to operate our business.

We have no committed external sources of funding. If we are unable to obtain funding on a timely basis, we may be required to significantly curtail our planned activities, including research and development programs and commercialization activities.

***Raising additional capital may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.***

Until such time, if ever, as we can generate substantial product revenues, we expect to seek additional funding through a combination of equity offerings, debt financings, government or other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements. Additional funding may not be available to us on acceptable terms or at all.

The terms of any financing may adversely affect the holdings or the rights of our security holders. To the extent that we raise additional capital through the sale of equity or convertible debt securities, our stockholders' ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our common stockholders. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such

## TABLE OF CONTENTS

as incurring additional debt, making capital expenditures or declaring dividends. We also could be required to seek funds through arrangements with collaborative partners or otherwise that may require us to relinquish rights to some of our technologies or product candidates or otherwise agree to terms unfavorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

***We have a limited operating history as a commercial organization, which may make it difficult to predict our future performance, and we expect to continue to face a number of factors that may cause operating results to fluctuate.***

We are a biopharmaceutical company with a limited operating history as a commercial entity. Prior to the commercial launch of Ocaliva for PBC in the United States in June 2016 and certain European countries in 2017, our operations were limited to developing our technology and undertaking preclinical studies and clinical trials of our product candidates and engaging in pre-commercial activities for Ocaliva in PBC. We do not have approval for any of our other product candidates.

While we commercially launched Ocaliva for PBC in the United States and Europe, we will need to conduct further activities to develop and cultivate a sustainable market for our drug in this orphan disease. These efforts will continue to be expensive and time-consuming, and we cannot be certain that we will be able to successfully develop a market. For example, we will need to conduct significant sales and marketing activities in jurisdictions where Ocaliva receives marketing approval. In the event we are unable to effectively develop and maintain a market for Ocaliva in PBC, our ability to effectively commercialize Ocaliva would be limited, and we would not be able to generate product revenues successfully.

Furthermore, our financial condition and operating results have varied significantly in the past and are expected to continue to significantly fluctuate from quarter-to-quarter or year-to-year due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include:

- any delays in regulatory review and approval of our product candidates in clinical development;
- delays in the commencement, enrollment and timing of clinical trials;
- difficulties in identifying and treating patients suffering from our target indications, including those due to PBC and PSC being rare diseases and NASH currently requiring an invasive liver biopsy for diagnosis;
- the success of our clinical trials through all phases of clinical development, such as the success of our Phase 3 REGENERATE trial of OCA in non-cirrhotic NASH patients with liver fibrosis;
- potential side effects of Ocaliva and our other product candidates that could delay or prevent approval or cause an approved drug to be taken off the market;
- the required timeframe for us to receive and analyze data from our clinical trials;
- our ability to identify and develop additional product candidates;
- market acceptance of Ocaliva and our product candidates, which may be affected by the reimbursement that our products receive from payors;
- our ability to establish and maintain an effective sales and marketing infrastructure directly or through collaborations with third parties;
- competition from existing products or new products that may emerge;
- the ability of patients or healthcare providers to obtain coverage or reimbursement for our products and the extent to which such coverage or reimbursement will be provided;
- our ability to adhere to clinical trial requirements directly or with third parties such as contract research organizations, or CROs;
- our dependency on third-party manufacturers to manufacture our products and key ingredients;

## TABLE OF CONTENTS

- our ability to establish or maintain collaborations, licensing or other arrangements;
- the costs to us, and our ability and our third-party collaborators' ability to obtain, maintain and protect our intellectual property rights;
- costs related to and outcomes of potential intellectual property, securities and other litigation;
- our ability to adequately support future growth;
- our ability to attract and retain key personnel to manage our business effectively;
- our ability to build and improve our company's infrastructure, systems and controls;
- potential product liability claims; and
- our ability to obtain and maintain adequate insurance coverage

### **Risks Related to the Development and the Regulatory Review and Approval of Our Products and Product Candidates**

*We cannot be certain if Ocaliva will receive full approval in the United States or the European Union for PBC, or that Ocaliva will be approved for PBC in other jurisdictions. Furthermore, OCA may fail to become approved for any other indication and we may not be able to successfully receive regulatory approval for any other product candidate. Without regulatory approval, we will not be able to market and commercialize our product candidates.*

The development of a product candidate and issues relating to its approval and marketing are subject to extensive regulation by the FDA in the United States, the EMA in Europe and regulatory authorities in other countries, with regulations differing from country to country. We are not permitted to market our product candidates in the United States or Europe until we receive approval of a New Drug Application, or NDA, from the FDA or a Marketing Authorization Application, or MAA, from the EMA, respectively. Currently, our ability to generate revenue related to product sales will depend on the successful marketing of Ocaliva for PBC and the development and regulatory approval of OCA for the treatment NASH and our other product candidates.

Ocaliva is our only drug that has been approved for sale. In the United States, Ocaliva has been approved for PBC under the accelerated approval pathway. Accelerated approval was granted for OCA in PBC based on a reduction in alkaline phosphatase; however, an improvement in survival or disease-related symptoms has not been established. Continued approval of Ocaliva for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Our Phase 4 COBALT confirmatory outcomes trial may fail to show a clinical benefit for OCA in PBC or may not satisfy the requirements of the regulatory authorities for other reasons.

As part of the post-marketing requirements, we are discussing modifications to the COBALT trial to potentially include a broader cross-section of PBC patients with early, moderately advanced and advanced disease according to the so-called Rotterdam criteria. We have agreed to evaluate the safety and efficacy of Ocaliva in patients with moderate to severe hepatic impairment and as monotherapy in patients with PBC. Finally, we have also agreed to develop and characterize a lower dose formulation of Ocaliva to allow for once daily dosing in patients with moderate or advanced hepatic impairment.

We commenced our commercial launch of Ocaliva for PBC in certain European countries in 2017 after the European Commission granted conditional approval for Ocaliva for the treatment of PBC. The marketing authorization in the European Union is conditioned on the completion of the COBALT trial and a trial evaluating the safety and efficacy of Ocaliva in patients with moderate to severe hepatic impairment.

We have filed for regulatory approval in Canada for OCA in PBC. We also plan to apply for marketing approval of Ocaliva for PBC in certain other markets across the world.

We currently have no other products approved for sale and we cannot guarantee that we will ever have additional marketable products or that our products will be approved for use in additional indications. NDAs and MAAs must include extensive preclinical and clinical data and supporting information to establish the product candidate's safety and effectiveness for each desired indication. NDAs and MAAs must also include

## TABLE OF CONTENTS

significant information regarding the chemistry, manufacturing and controls for the product. Obtaining approval of an NDA or an MAA is a lengthy, expensive and uncertain process, and we may not be successful in obtaining approval. The FDA and the EMA review processes can take years to complete and approval is never guaranteed. Even after the submission of an NDA to the FDA, the FDA must decide whether to accept or reject the submission for filing. In addition, in June 2016, eligible members of the electorate in the United Kingdom decided by referendum to leave the European Union, or Brexit. Since a significant proportion of the regulatory framework in the United Kingdom is derived from European Union directives and regulations, the referendum could materially change the regulatory regime applicable to our operations, including with respect to the approval of our product candidates.

Approvals may also be conditional upon the completion of one or more clinical trials. In addition, delays in approvals or rejections of marketing applications in the United States, Europe or other countries may be based upon many factors, including regulatory requests for additional analyses, reports, data, preclinical studies and clinical trials, regulatory questions regarding different interpretations of data and results, changes in regulatory policy during the period of product development and the emergence of new information regarding our product candidates or other products. Regulatory approval is also dependent on successfully passing regulatory inspection of our company, our clinical sites and key vendors and to ensure compliance with applicable good clinical, laboratory and manufacturing practices regulation. Critical findings could jeopardize or delay the approval of the NDA or MAA.

We will also be required to finalize the negotiations and discussions on our product labels for the respective jurisdictions in which we seek regulatory approval. Even if a product is approved, the FDA or the EMA, as the case may be, may limit the indications or uses for which the product may be marketed, require extensive warnings on the product labeling or require expensive and time-consuming clinical trials or reporting as conditions of approval. Also, regulatory approval for any of our product candidates may be withdrawn. Regulatory authorities in countries outside of the United States and Europe also have requirements for approval of drug candidates with which we must comply prior to marketing in those countries. Obtaining regulatory approval for marketing of a product candidate in one country does not ensure that we will be able to obtain regulatory approval in any other country.

We will need to complete a number of clinical trials and other studies for the continued development of OCA in indications other than PBC. For example, we currently have ongoing our Phase 3 REGENERATE trial of OCA in non-cirrhotic NASH patients with liver fibrosis and our Phase 2 CONTROL trial to characterize the lipid metabolic effects of OCA and cholesterol management effects of concomitant statin administration in NASH patients. We also intend to conduct additional trials in NASH, such as one in NASH patients with cirrhosis. In each of these cases, our ability to obtain the approvals necessary to commercialize our product candidates will depend on our ability to conduct and complete these additional trials as well as assemble various other data to complete our regulatory filings for OCA in the relevant indication or patient population.

There can be no assurance that we will be able to receive marketing approval for OCA in PBC in jurisdictions outside of the United States and the European Union or marketing approval for OCA in NASH or any other indication. We cannot predict whether our trials and studies as to NASH or any other indication or patient population will be successful or whether regulators will agree with our conclusions regarding the preclinical studies and clinical trials we have conducted to date or require us to conduct additional studies or trials. For example, while OCA received breakthrough therapy designation from the FDA in January 2015 for the treatment of NASH patients with liver fibrosis, we do not know if one pivotal clinical trial will be sufficient for marketing approval or if regulators will ultimately agree to a surrogate endpoint for accelerated approval of OCA for the treatment of NASH. While the interim analysis for the REGENERATE trial will be based on a histological endpoint as was the case in the Phase 2b clinical trial for the treatment of NASH, known as the FLINT trial, sponsored by the U.S. National Institute of Diabetes and Digestive and Kidney Diseases, or NIDDK, a part of the National Institutes of Health, our Phase 3 REGENERATE trial has different trial designs. For example, upon the finalization of a protocol amendment underway, the primary endpoint for the interim analysis for REGENERATE may be achieved based on one of: (i) the proportion of OCA-treated patients relative to placebo achieving at least one stage of liver fibrosis improvement with no worsening of NASH or (ii) the proportion of OCA-treated patients relative to placebo achieving NASH resolution with no

## TABLE OF CONTENTS

worsening of liver fibrosis. Furthermore, we selected a definition for NASH resolution for the trial, which defines a responder as a patient achieving a histologic score of 0 for ballooning and 0 or 1 for inflammation. The REGENERATE trial will also remain blinded after the interim analysis and continue to follow patients until the occurrence of a pre-specified number of adverse liver-related clinical events, including progression to cirrhosis, to confirm clinical benefit on a post-marketing basis. While the statistical analysis planned for our REGENERATE trial is designed based on the data from the FLINT trial, the differences in the two trials may limit the utility of using FLINT as a basis for the design of the REGENERATE trial.

Furthermore, the Phase 2 dose ranging trial of OCA in 200 adult NASH patients in Japan conducted by our collaborator, Sumitomo Dainippon, did not meet its primary endpoint with statistical significance. In this trial, there was a dose dependent, although not statistically significant, increase in the percentage of OCA treated patients compared to placebo who achieved the primary endpoint ( $p=0.053$ ). In addition, no difference was seen in fibrosis improvement in the OCA groups compared to placebo. The baseline characteristics between the patients in the Japanese Phase 2 trial conducted by Sumitomo Dainippon were distinct in a number of ways from those of the Western patients included in the Phase 2b FLINT trial conducted by NIDDK. For example, differences were observed among the patient population at baseline in relation to gender mix and metabolic factors like weight, diabetes status, dyslipidemia and hypertension. While our REGENERATE trial was designed based on the results of the FLINT trial and is anticipated to enroll a predominantly Western NASH patient population, the results of the FLINT trial may not be replicated in our REGENERATE trial. Although Sumitomo Dainippon has informed us that it is exploring the initiation of its registrational trials for OCA in NASH patients intended to support the registration of this indication in Japan, the results may not be an improvement as compared to those from the Phase 2 trial on Japanese NASH patients and there is no assurance that Sumitomo Dainippon will initiate any registrational trials.

If we are unable to obtain approval from the FDA, the EMA or other regulatory agencies for OCA and our other product candidates, or if, subsequent to approval, we are unable to successfully commercialize OCA or our other product candidates, we will not be able to generate sufficient revenue to become profitable or to continue our operations.

***We are developing product candidates for the treatment of rare diseases or diseases for which there are no or limited therapies, such as PBC, NASH and PSC, and for some of which there is little clinical experience, and our development approach involves new endpoints and methodologies. As a result, there is increased risk that we will not be able to gain agreement with regulatory authorities regarding an acceptable development plan, the outcome of our clinical trials will not be favorable or that, even if favorable, regulatory authorities may not find the results of our clinical trials to be sufficient for marketing approval.***

We are focused on developing therapeutics for the treatment of rare diseases and diseases for which there are no treatments. As a result, the design and conduct of clinical trials for these diseases and other indications we may pursue will be subject to increased risk.

The FDA generally requires two pivotal clinical trials to approve an NDA. Furthermore, for full approval of an NDA, the FDA requires a demonstration of efficacy based on a clinical benefit endpoint. Under Subpart H regulations, the FDA can grant accelerated approval based on a surrogate reasonably likely to predict clinical benefit. Even if results from our planned pivotal clinical trials for a specific indication are highly significant and we believe reasonably likely to predict clinical benefit, the FDA may not accept the results of such trials and grant accelerated approval of our product candidate for such indication.

Even if we receive accelerated approval for any of our product candidates, we may be required to conduct a post-approval clinical outcomes trial to confirm the clinical benefit of the product candidate by demonstrating the correlation of biochemical therapeutic response in patients with a significant reduction in adverse clinical outcomes over time. If a confirmatory clinical outcomes trial is required, we may be required to have the trial be substantially underway at the time we submit an NDA. It is possible that our NDA submission for regulatory approval will not be accepted by the FDA for review or, even if it is accepted for review, that there may be delays in the FDA's review process and that the FDA may determine that our NDA

## TABLE OF CONTENTS

does not merit the approval of the product candidate, in which case the FDA may require that we conduct and/or complete additional clinical trials and preclinical studies before it will reconsider our application for approval.

Following discussions with regulatory authorities, we initiated our COBALT clinical outcomes confirmatory trial in PBC in December 2014 prior to the approval of Ocaliva. We are currently discussing modifications to the COBALT trial to potentially include a broader cross-section of PBC patients with early, moderately advanced and advanced disease according to the so-called Rotterdam criteria. We have agreed to evaluate the safety and efficacy of Ocaliva in patients with moderate to severe hepatic impairment and as monotherapy in patients with PBC. We have agreed to similar requirements with the EMA as part of the conditional approval of Ocaliva in PBC in Europe. We may be required to conduct other post-marketing studies based on our regulatory interactions with other regulatory agencies across the world. There can be no assurance that our COBALT trial or other trials conducted as part of our post-marketing obligations will confirm that the surrogate endpoints used for accelerated approval will eventually show an adequate correlation with clinical outcomes. If any such trial fails to show such adequate correlation, we may not be able to maintain our previously granted marketing approval for Ocaliva in PBC.

Our marketing authorization in the European Union for Ocaliva for the treatment of PBC is not a full approval and is conditional on post-approval studies. Our ability to obtain and maintain conditional marketing authorization in the European Union will be limited to specific circumstances and subject to several conditions and obligations, if obtained at all, including the completion of one or more clinical outcome trials to confirm the clinical benefit of Ocaliva in PBC. Conditional marketing authorizations based on incomplete clinical data may be granted for a limited number of listed medicinal products for human use, including products designated as orphan medicinal products under European Union law, if (1) the risk-benefit balance of the product is positive, (2) it is likely that the applicant will be in a position to provide the required comprehensive clinical trial data, (3) unmet medical needs will be fulfilled and (4) the benefit to public health of the immediate availability on the market of the medicinal product outweighs the risk inherent in the fact that additional data are still required. Specific obligations, including with respect to the completion of ongoing or new studies, and with respect to the collection of pharmacovigilance data, may be specified in the conditional marketing authorization. Conditional marketing authorizations are valid for one year, and may be renewed annually, if the risk-benefit balance remains positive, and after an assessment of the need for additional or modified conditions.

Our ongoing Phase 3 REGENERATE trial of OCA in non-cirrhotic NASH patients with liver fibrosis, incorporates an interim primary surrogate endpoint that may serve as the basis for a supplemental NDA filing for accelerated approval in the United States and approval in Europe. Accelerated approval in the United States and conditional approval in the European Union for OCA in NASH are subject to similar risks as discussed above in relation to OCA for PBC. The primary endpoint in the Phase 2b FLINT trial of OCA in NASH patients was based on liver biopsy and was defined as an improvement of two or more points in the NAFLD activity score (a system of scoring the histopathological features in the liver), or NAS, with no worsening of liver fibrosis. In contrast, upon the finalization of a protocol amendment underway, the primary endpoint for the interim analysis for REGENERATE may be achieved based on one of: (i) the proportion of OCA-treated patients relative to placebo achieving at least one stage of liver fibrosis improvement with no worsening of NASH or (ii) the proportion of OCA-treated patients relative to placebo achieving NASH resolution with no worsening of liver fibrosis. Furthermore, we selected a definition for NASH resolution for the trial, which defines a responder as a patient achieving a histologic score of 0 for ballooning and 0 or 1 for inflammation. Currently, other biopharmaceutical companies are enrolling or have initiated trials in certain subpopulations of NASH patients based on different endpoints from those in the FLINT and REGENERATE trials. Although the FDA acknowledged at recent workshops the possibility of granting accelerated approval for NASH therapies using surrogate endpoints, with potential examples including histological improvement, using the NAS or another scoring system, histological resolution of NASH, or improvements in fibrosis in pre-cirrhotic patients with NASH, the FDA did not provide any formal regulatory guidance on approvable endpoints and may not accept a surrogate endpoint for OCA for the treatment of NASH.

## TABLE OF CONTENTS

It is possible that if we seek marketing approval of OCA for non-cirrhotic NASH patients with liver fibrosis based on the interim results of our REGENERATE trial, our NDA submission may not be accepted by the FDA for review or, even if accepted for review, there may be delays in the FDA's review process and the FDA may determine that our NDA does not merit the approval of OCA for the treatment of non-cirrhotic NASH patients. The FDA may also require that we continue our REGENERATE trial until its full completion to assess potential benefits of OCA treatment on liver-related and other clinical outcomes. Our regulatory pathway for OCA for the treatment of NASH will depend upon our discussions with the FDA and EMA. As a result, we may face difficulty in designing an acceptable registration strategy around REGENERATE or any other trials in different subpopulations of NASH patients. In addition, since the design of the REGENERATE trial deviates from that of the FLINT trial, there is an increased risk that the results of the REGENERATE trial would differ from the FLINT results.

The EMA and regulatory authorities in other countries in which we may seek approval for, and market, OCA or our other product candidates may require additional preclinical studies and/or clinical trials prior to granting approval. It may be expensive and time consuming to conduct and complete additional preclinical studies and clinical trials that the FDA, EMA and other regulatory authorities may require us to perform. As such, any requirement by the FDA, EMA or other regulatory authorities that we conduct additional preclinical studies or clinical trials could materially and adversely affect our business, financial condition and results of operations. Furthermore, even if we receive regulatory approval of OCA for the treatment of any of our targeted indications, the labeling for our product candidates in the United States, Europe or other countries in which we seek approval may include limitations that could impact the commercial success of our product candidates.

***Delays in the commencement, enrollment and completion of clinical trials could result in increased costs to us and delay or limit our ability to obtain regulatory approval for OCA and our other product candidates.***

Delays in the commencement, enrollment and completion of clinical trials could increase our product development costs or limit the regulatory approval of our product candidates. We currently have underway a number of trials including our Phase 4 COBALT clinical outcomes confirmatory trial of OCA in PBC, our Phase 2 AESOP trial of OCA in PSC, our Phase 3 REGENERATE trial of OCA in NASH, our Phase 2 CARE trial of OCA in biliary atresia and our Phase 2 CONTROL trial to assess the lipid metabolic effects of OCA and the effects of concomitant statin administration in NASH patients. The results from these trials may not be available when we expect or we may be required to conduct additional clinical trials or preclinical studies not currently planned to receive approval for OCA as a treatment for the related indication. In addition, our clinical programs are subject to a number of variables and contingencies, such as the results of other trials, patient enrollments or regulatory interactions that may result in a change in timing. As such, we do not know whether any future trials or studies of our other product candidates will begin on time or will be completed on schedule, if at all.

The commencement, enrollment and completion of clinical trials can be delayed or suspended for a variety of reasons, including:

- inability to obtain sufficient funds required for a clinical trial or lack of adequate funding to continue the clinical trial due to unforeseen costs or other business decisions;
- inability to reach agreements on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- clinical holds, other regulatory objections to commencing or continuing a clinical trial or the inability to obtain regulatory approval to commence a clinical trial in countries that require such approvals;
- discussions with the FDA or non-U.S. regulators regarding the scope or design of our clinical trials, which may occur at various times, including subsequent to the initiation of the clinical trial;
- inability to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs, including some that may be for the same indications targeted by our product candidates;

## TABLE OF CONTENTS

- the delay in receiving results from or the failure to achieve the necessary results in other clinical trials;
- inability to obtain approval from institutional review boards, or IRBs, to conduct a clinical trial at their respective sites;
- severe or unexpected drug-related adverse effects experienced by patients or any determination that a clinical trial presents unacceptable health risks;
- a breach of the terms of any agreement with, or for any other reason by, current or future collaborators that have responsibility for the clinical development of any of our product candidates, including Sumitomo Dainippon and Servier or investigators leading clinical trials on our product candidates;
- inability to timely manufacture sufficient quantities of the product candidate required for a clinical trial;
- difficulty recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including meeting the enrollment criteria for our trial, the rarity of the disease or the characteristics of the population being studied, the risks of procedures that may be required as part of the trial, such as a liver biopsy, and competition from other clinical trial programs for the same indications as our product candidates; and
- inability to retain enrolled patients after a clinical trial is underway.

For example, our REGENERATE trial is a large and complex Phase 3 clinical trial in a disease without any approved therapies and involves serial liver biopsies. Based on the planned revisions to the protocol for REGENERATE, we have updated our guidance that we are aiming to complete enrollment of our interim analysis cohort by mid-2017. While we continuously evaluate and implement a variety of options to complete enrollment as quickly as possible, there can be no assurance that we will be able to enroll a sufficient number of patients or complete the interim analysis or the trial on a timely basis.

In addition, if we or any of our collaborators are required to conduct additional clinical trials or other preclinical studies of our product candidates beyond those contemplated, our ability to obtain regulatory approval of these product candidates and generate revenue from their sales would be similarly harmed.

***Clinical failure can occur at any stage of clinical development. The results of earlier clinical trials are not necessarily predictive of future results and any product candidate we, Sumitomo Dainippon, Servier or our potential future collaborators advance through clinical trials may not have favorable results in later clinical trials or receive regulatory approval.***

Clinical failure can occur at any stage of our clinical development. Clinical trials may produce negative or inconclusive results, and we or our collaborators may decide, or regulators may require us, to conduct additional clinical trials or preclinical studies. In addition, data obtained from trials and studies are susceptible to varying interpretations, and regulators may not interpret our data as favorably as we do, which may delay, limit or prevent regulatory approval. Success in preclinical studies and early clinical trials does not ensure that subsequent clinical trials will generate the same or similar results or otherwise provide adequate data to demonstrate the efficacy and safety of a product candidate. A number of companies in the pharmaceutical industry, including those with greater resources and experience than us, have suffered significant setbacks in Phase 3 clinical trials and at other stages of clinical development, even after seeing promising results in earlier clinical trials.

In addition, the design of a clinical trial can determine whether its results will support approval of a product and flaws in the design of a clinical trial may not become apparent until the clinical trial is well-advanced. We may be unable to design and execute a clinical trial to support regulatory approval. Further, clinical trials of potential products often reveal that it is not practical or feasible to continue development efforts. If OCA or our other product candidates are found to be unsafe or lack efficacy for any indication, we will not be able to obtain regulatory approval for them, and our prospects and business may be materially and adversely affected.

## TABLE OF CONTENTS

In some instances, there can be significant variability in safety and/or efficacy results between different trials of the same product candidate due to numerous factors, including changes or differences in trial protocols, differences in composition of the patient populations, adherence to the dosing regimen and other trial protocols and the rate of dropout among clinical trial participants. We do not know whether any Phase 2, Phase 3 or other clinical trials we or any of our collaborators may conduct will demonstrate consistent or adequate efficacy and safety to obtain regulatory approval to market our product candidates. If we are unable to bring any of our current or future product candidates to market, or to acquire any marketed, previously approved products, our ability to create long-term stockholder value will be limited.

Although Ocaliva has received accelerated approval in the United States and conditional approval in the European Union, its full approval depends on the results of post-marketing clinical trials, including the Phase 4 COBALT trial. We cannot assure you that these trials will demonstrate a correlation of biochemical therapeutic response in patients taking Ocaliva with a significant reduction in adverse clinical events over time.

In December 2014, we received comprehensive datasets from the FLINT trial, which met its primary endpoint with statistical significance. In October 2015, we announced that the Phase 2 dose ranging trial of OCA in the Sumitomo Dainippon Phase 2 trial did not meet its primary endpoint with statistical significance. In this trial, there was a dose dependent, although not statistically significant, increase in the percentage of OCA treated patients compared to placebo who achieved the primary endpoint ( $p=0.053$ ). In addition, no difference was seen in fibrosis improvement in the OCA groups compared to placebo. The Phase 2 trial in NASH conducted in Japan by our collaborator Sumitomo Dainippon involved different doses of OCA being administered to the trial subjects than those utilized in FLINT. Furthermore, the baseline characteristics between the patients in the Japanese Phase 2 trial conducted by Sumitomo Dainippon were distinct in a number of ways from those of the Western patients included in FLINT. While our REGENERATE trial was designed based on the results of the FLINT trial and is anticipated to enroll a predominantly Western NASH patient population, the results of the FLINT trial may not be replicated in our REGENERATE trial. In addition, since the design of the REGENERATE trial deviates from that of the FLINT trial, there is an increased risk that the results of the REGENERATE trial would differ from the FLINT results. Even though OCA has been granted breakthrough therapy designation by the FDA, we do not know if one pivotal clinical trial will be sufficient for marketing approval or if regulators will agree to a surrogate endpoint for accelerated approval of OCA for the treatment of NASH. As a result, it may take longer than anticipated to initiate and complete the Phase 3 REGENERATE trial or our Phase 3 program in NASH for other patient subpopulations.

***Our product candidates may have undesirable side effects which may delay or prevent marketing approval, or, if approval is received, require our product candidates to be taken off the market, require them to include safety warnings or otherwise limit their sales.***

OCA has been shown to be a potent agonist of the farnesoid X receptor, or FXR. With the exception of the endogenous human bile acid chenodeoxycholic acid, or CDCA, and cholic acid, there are no approved FXR agonists and the adverse effects from long-term exposure to this drug class are unknown. Unforeseen side effects from any of our product candidates could arise either during clinical development or, if approved, after the approved product has been marketed.

The most common side effects observed in clinical trials of OCA in PBC were pruritus, or itching, fatigue, headaches, nausea, constipation and diarrhea. In our Phase 2 PBC clinical trial of OCA in combination with ursodiol, approximately 8% of the patients enrolled in the 10 mg and 25 mg dose groups withdrew from the trial due to severe pruritus. At the 50 mg dose, approximately 25% of the patients withdrew from the trial due to severe pruritus. In our POISE trial, pruritus, generally mild to moderate, was the most frequently reported adverse event associated with OCA treatment and was observed in 38% of patients on placebo, 70% of patients in the 10 mg OCA group and 56% of patients in the OCA titration group (5 mg to 10 mg). Eight patients discontinued due to pruritus, of whom none were in the placebo group, seven (10%) patients were in the 10 mg OCA group and one (1%) patient was in the OCA titration group. Pruritus also has been observed in other clinical trials of OCA. Decreases in HDL cholesterol were also observed during treatment in the POISE trial. In our Phase 2 trials for OCA in PBC, a dose-response relationship was observed for the occurrence of liver-related adverse reactions, including jaundice, ascites and primary biliary cholangitis flare with dosages of OCA of 10 mg once daily to 50 mg once daily (up to 5-times the highest

## TABLE OF CONTENTS

recommended dosage), as early as one month after starting treatment with OCA. The European label for Ocaliva also notes that elevations in alanine amino transferase and aspartate aminotransferase were observed in patients treated with OCA.

Ocaliva is contraindicated for patients with complete biliary obstruction in the United States and the European Union. For patients with moderate or severe hepatic impairment, who represent approximately 3% of PBC patients, the U.S. label for Ocaliva in PBC includes an adjustment in the dosing regimen and the EU label recommends an adjusted dosing regimen due to potential exposure levels in this population. For patients with HDL reductions and no response to Ocaliva after one year at the maximum tolerated dose, the U.S. label asks prescribing physicians to weigh the risks against the benefits of continuing treatment.

Based on information in the manuscript for the FLINT trial published in November 2014, pruritus occurred more frequently in the OCA treatment group than in the placebo treatment group (23% vs. 6%,  $p < 0.001$ ) and at a higher grade (predominately moderate pruritus), but resulted in only one patient discontinuation in the OCA treatment group. In the FLINT trial, OCA treatment was associated with changes in serum lipid levels, including increases in total cholesterol and LDL cholesterol and a decrease in HDL cholesterol, that were observed within 12 weeks of initiating treatment, peaked and then decreased in magnitude while on treatment, and reversed further during the 24-week post-treatment period. As previously disclosed, these changes in cholesterol levels, along with achieving the pre-defined efficacy criteria, played a role in the decision of the FLINT data and safety monitoring board to terminate the treatment phase of FLINT, and the publication of the FLINT results has noted the need for further study of these changes. In December 2015, we initiated CONTROL, a Phase 2 trial characterizing the lipid metabolic effects of OCA and cholesterol management effects of concomitant statin administration in NASH patients. We completed enrollment of the targeted number of patients for our CONTROL trial in October 2016. There were two patient deaths in the FLINT trial, and neither death was considered related to OCA treatment.

Additional or unforeseen side effects from OCA or any of our other product candidates could arise either during clinical development or, if approved, after the approved product has been marketed. With the approval of Ocaliva in PBC, OCA will be used in an environment that is less rigorously controlled than in clinical studies. If new side effects are found, if known side effects are shown to be more severe than previously observed or if OCA is shown to have other unexpected characteristics, we may need to abandon our development of OCA for NASH, PSC, biliary atresia and other potential indications. Furthermore, our commercial efforts for Ocaliva in PBC may be materially and adversely affected.

The range and potential severity of possible side effects from systemic therapies is significant. The results of future clinical trials may show that our product candidates cause undesirable or unacceptable side effects, which could interrupt, delay or halt clinical trials, and result in delay of, or failure to obtain, marketing approval from the FDA and other regulatory authorities, or result in marketing approval from the FDA and other regulatory authorities with restrictive label warnings.

In addition, our drug candidates are being developed as potential treatments for severe, life threatening diseases and, as a result, our trials will necessarily be conducted in a patient population that will be more prone than the general population to exhibit certain disease states or adverse events. It is also possible that patients receiving treatment from OCA or our drug candidates for the labeled indication may suffer from other concomitant illnesses that may increase the likelihood of certain adverse events. It may be difficult to discern whether certain events or symptoms observed during our trials were due to our drug candidates or placebo, resulting in our company and our development programs being negatively affected even if such events or symptoms are ultimately determined to be unlikely related to our drug candidates. We further cannot assure you that additional or more severe adverse side effects with respect to OCA will not develop in future clinical trials, which could delay or preclude regulatory approval of OCA or limit its commercial use.

## TABLE OF CONTENTS

If any of our product candidates receives marketing approval and we or others later identify undesirable or unacceptable side effects caused by such products:

- regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication or field alerts to physicians and pharmacies;
- we may be required to change instructions regarding the way the product is administered, conduct additional clinical trials or change the labeling of the product;
- we may be subject to limitations on how we may promote the product;
- sales of the product may decrease significantly;
- regulatory authorities may require us to take our approved product off the market;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

***Breakthrough therapy designation for OCA may not lead to faster development or regulatory processes nor does it increase the likelihood that OCA will receive marketing approval for NASH.***

If a drug is intended for the treatment of a serious or life-threatening condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development, the FDA may grant a breakthrough therapy designation. Breakthrough therapy designation is intended to facilitate the development, and expedite the review of such drugs, but the breakthrough therapy designation does not assure any such qualification or ultimate marketing approval by the FDA.

In January 2015, we received breakthrough therapy designation for OCA in the treatment of NASH patients with fibrosis. However, there is no guarantee that the receipt of breakthrough therapy designation will result in a faster development process, review or approval for OCA in fibrotic NASH patients or increase the likelihood that OCA will be granted marketing approval for fibrotic NASH patients. Likewise, any future breakthrough therapy designation for any other potential indication of OCA neither guarantees a faster development process, review or approval nor improves the likelihood of the grant of marketing approval by FDA for any such potential indication of OCA compared to drugs considered for approval under conventional FDA procedures. In addition, the FDA may withdraw any breakthrough therapy designation at any time. We may seek a breakthrough therapy designation for other of our product candidates, but the FDA may not grant this status to any of our proposed product candidates.

***We may not be able to obtain or maintain orphan drug exclusivity for our product candidates, if approved, which would cause our revenues to suffer.***

Regulatory authorities in some jurisdictions, including the United States and Europe, 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 a drug or biologic 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, if a product with an orphan drug designation subsequently receives the first marketing approval for the indication for which it has such designation, the product is entitled to a period of marketing exclusivity, which precludes the EMA or the FDA from approving another marketing application for the same product for that time period. The applicable period is seven years in the United States and ten years in Europe. 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.

Orphan drug exclusivity may be lost if the FDA or 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. In addition, it is possible that orphan marketing exclusivity attaching to the marketing authorization will be reduced to six years if, at the end of the fifth year

## TABLE OF CONTENTS

following the receipt of marketing authorization, the EMA and the Committee for Orphan Medicinal Products determine that the product does not satisfy the requisite criteria including demonstration of significant clinical benefit (having regard to requirements set out in the applicable EU regulations and guidance) where it is shown based on the available evidence that the product is sufficiently profitable to justify not to maintain the marketing exclusivity.

The failure to maintain orphan status may impact our ability to receive a premium price for OCA or our other products and may subject us to mandatory price discounts in Europe. In addition, our ability to launch in Europe may be delayed and we may lose other benefits such as tax exemptions for sales. As such, the loss of orphan drug status may have a negative effect on our ability to successfully commercialize our products, earn revenues and achieve profitability.

Even if we obtain 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. Even after an orphan drug is approved, the FDA and EMA can subsequently approve the later product for the same condition if the FDA concludes that the later product is clinically superior in that it is shown to be safer, more effective or makes a major contribution to patient care.

***If the FDA and EMA and other regulatory agencies do not approve the manufacturing facilities of our future contract manufacturers for commercial production on a timely basis or at all, we may not be able to commercialize any of our product candidates or commercialization of our product candidates could be delayed.***

We do not intend to manufacture the pharmaceutical products that we plan to sell. We currently have agreements with a contract manufacturer for the production of the active pharmaceutical ingredients and the formulation of sufficient quantities of drug product for commercial sales and for our clinical trials and preclinical studies that we plan to conduct prior to and after seeking regulatory approval. If our contract manufacturer should cease to provide services to us for any reason, we likely would experience delays in advancing our clinical trials while we identify and qualify one or more replacement suppliers and we may be unable to obtain replacement supplies on terms that are favorable to us.

We currently have a long-term supply agreement with PharmaZell GMBH for the manufacture of commercial supply for Ocaliva. While we have procured sufficient supplies for the commercial launch of Ocaliva in PBC, we may not be able to procure sufficient supplies of Ocaliva on a continued basis. We are also seeking to qualify one or more back-up suppliers for our active ingredients; however, we may not be able to enter into additional long-term commercial supply agreements for OCA with other third-party manufacturers. We do not have agreements for long-term supplies of any of our other product candidates. We currently obtain these supplies and services from our third-party contract manufacturers on a purchase order basis.

Additionally, the facilities used by any contract manufacturer to manufacture OCA or any of our other product candidates must be the subject of a satisfactory inspection before the FDA or the regulators in other jurisdictions approve the product candidate manufactured at that facility. We are completely dependent on these third-party manufacturers for compliance with the requirements of U.S. and non-U.S. regulators for the manufacture of our finished products. If our manufacturers cannot successfully manufacture material that conform to our specifications and current good manufacturing practice requirements of any governmental agency whose jurisdiction to which we are subject, our product candidates will not be approved or, if already approved, may be subject to recalls.

Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured the product candidates, including:

- the possibility that we are unable to enter into or renew a manufacturing agreement with a third party to manufacture OCA or our product candidates;

## TABLE OF CONTENTS

- the possible breach of the manufacturing agreements by the third parties because of factors beyond our control; and
- the possibility of termination or nonrenewal of the agreements by the third parties before we are able to arrange for a qualified replacement third-party manufacturer.

Any of these factors could cause the delay of approval or disruption of commercialization of our product candidates, cause us to incur higher costs, prevent us from commercializing our product candidates successfully or disrupt the supply of our products after commercial launch. Furthermore, if any of our product candidates are approved and contract manufacturers fail to deliver the required commercial quantities of finished product on a timely basis and at commercially reasonable prices and we are unable to find one or more replacement manufacturers capable of production at a substantially equivalent cost, in substantially equivalent volumes and quality and on a timely basis, we would likely be unable to meet demand for our products and could lose potential revenue. It may take several years to establish an alternative source of supply for our product candidates and to have any such new source approved by the government agencies that regulate our products.

***Even if our product candidates receive regulatory approval, we will still be subject to strict regulatory requirements governing manufacturing and marketing of our products and, as a result, we could face future development and regulatory difficulties.***

Our product candidates, if approved, will also be subject to ongoing regulatory requirements for labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information. In addition, approved products, manufacturers and manufacturers' facilities are required to comply with extensive FDA and EMA requirements and requirements of other similar agencies, including ensuring that quality control and manufacturing procedures conform to current Good Manufacturing Practices, or cGMPs. As such, we and our contract manufacturers are subject to continual review and periodic inspections to assess compliance with cGMPs. Accordingly, we and others with whom we work must continue to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production and quality control. We will also be required to report certain adverse reactions and production problems, if any, to the FDA and EMA and other similar agencies and to comply with certain requirements concerning advertising and promotion for our products. Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved label. Accordingly, we may not promote our approved products such as Ocaliva for indications or uses for which they are not approved.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, or disagrees with the promotion, marketing or labeling of a product, it may impose restrictions on that product or us, including requiring withdrawal of the product from the market. If our product candidates fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us or our collaborators to enter into a consent decree or permanent injunction, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- impose other administrative or judicial civil or criminal penalties;
- withdraw regulatory approval;
- refuse to approve pending applications or supplements to approved applications filed by us, Sumitomo Dainippon, Servier or our potential future collaborators;
- impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products.

## Risks Related to the Commercialization of Our Products

*Reimbursement decisions by third-party payors may have an adverse effect on pricing and market acceptance of Ocaliva or our product candidates, if approved. If there is not sufficient reimbursement for our products or they are not covered at all, it is less likely that they will be widely used.*

Market acceptance and sales of any products or product candidates that we develop will depend on reimbursement policies and may be affected by future healthcare reform measures. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which drugs they will cover and establish payment levels. We cannot be certain that reimbursement will be available for Ocaliva or any other products and product candidates that we develop. Also, reimbursement policies could reduce the demand for, or the price paid for, our products. If reimbursement is not available or is available on a limited basis, we may not be able to successfully commercialize Ocaliva or any other products or product candidates that we develop.

In the United States, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or MMA, changed the way Medicare covers and pays for pharmaceutical products. The legislation established Medicare Part D, which expanded Medicare coverage for outpatient prescription drug purchases by the elderly but provided authority for limiting the number of drugs that will be covered in any therapeutic class. The MMA also introduced a new reimbursement methodology based on average sales prices for physician-administered drugs. Any negotiated prices for our products covered by a Part D prescription drug plan will likely be lower than the prices we might otherwise obtain. Moreover, while the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment that results from the MMA may result in a similar reduction in payments from non-governmental payors.

In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or collectively, ACA, became law in the United States. The goal of ACA is to reduce the cost of health care and substantially change the way health care is financed by both governmental and private insurers. The ACA requires discounts under the Medicare drug benefit program and increased the rebates paid by pharmaceutical companies on drugs covered by Medicaid. The ACA also imposes an annual fee, which increases annually, on sales by branded pharmaceutical manufacturers. Following the November 2016 U.S. elections and the inauguration of the President, uncertainty exists about the future of the coverage expansion provided by the ACA; the President and congressional leaders have expressed interest in repealing these ACA provisions and replacing them with alternatives that may be less costly and provide state Medicaid programs and private health plans more flexibility. It is possible that these repeal and replacement initiatives, if enacted into law, could ultimately result in fewer individuals having health insurance coverage and/or in individuals having insurance coverage with less generous benefits. The scope of potential future legislation to repeal and replace ACA provisions is highly uncertain in many respects, and it is possible that some of the ACA provisions that generally hurt the research-based pharmaceutical industry could also be repealed along with Affordable Care Act coverage expansion provisions; however, at this time the coverage expansion provisions of the ACA appear most likely to be repealed and replaced.

In addition, third-party payors attempt to contain health care costs by demanding price discounts or rebates and limiting both the types and variety of drugs that they will cover and the amounts that they will pay for drugs. As a result, they may not cover or provide adequate payment for our products. We might need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of our products or any other future products to such payors' satisfaction. Such studies might require us to commit a significant amount of management's time and our financial and other resources. Our products might not ultimately be considered cost-effective. Adequate third-party reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development. The market for a drug will depend significantly on access to third-party payors' drug formularies, or lists of medications for which third-party payors provide coverage and reimbursement. Third-party payors may refuse to include a particular branded drug in their formularies or otherwise restrict patient access to a branded drug when a less costly generic equivalent or other alternative is available, even if not approved for the indication for which the branded drug is approved. In addition, due to there being no uniform policy of coverage and reimbursement in

## TABLE OF CONTENTS

the United States among commercial payors, coverage and reimbursement for pharmaceutical products may differ significantly from payor to payor.

We recently commenced the launch of Ocaliva for PBC in the United States. We do not know if the price we have selected for Ocaliva will receive broad acceptance from third-party payors. The coverage determination process may be a time-consuming and costly process that requires us to provide scientific and clinical support for the use of Ocaliva in PBC to each payor separately, with no assurance that coverage will be obtained. If we are unable to obtain adequate coverage of Ocaliva from third-party payors, the adoption of Ocaliva by physicians and patients as a treatment for PBC may be limited. This in turn could affect our ability to successfully commercialize Ocaliva and adversely impact our profitability, results of operations, financial condition and future success.

Reimbursement in the European Union and many other territories must be negotiated on a country-by-country basis and in many countries the product cannot be commercially launched until reimbursement is approved. The timing to complete the negotiation process in each country is highly uncertain, and in some countries we expect that it may exceed 24 months. Even after a price is negotiated, countries frequently request or require adjustments to the price and other concessions over time or require approvals regionally. Reimbursement agencies in Europe are often more conservative than those in the United States and the reimbursement process is often slower since reimbursement decisions are made on a country-by-country basis. Prices for drugs in Europe generally decrease over time.

The United States and several other jurisdictions are considering, or have already enacted, a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access to healthcare. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. We expect to experience pricing pressures in connection with the sale of OCA and any other products that we develop, due to the trend toward managed healthcare, the increasing influence of health maintenance organizations and additional legislative proposals. Pricing pressures recently experienced by the pharmaceutical industry may be further exacerbated by legislative and policy changes under consideration by the Trump administration.

***Ocaliva and other product candidates, if approved, may not achieve broad market acceptance among physicians, patients and healthcare payors, and as a result our revenues generated from their sales may be limited.***

The commercial success of Ocaliva or our other products or product candidates that we develop, if approved, will depend upon their acceptance among the medical community, including physicians, healthcare payors and patients. In order for Ocaliva to be commercially successful in PBC, we will need to demonstrate its utility as a treatment for patients who have an inadequate response to or who are unable to tolerate ursodiol, referred to as second line treatment, and show that it is more effective than any other alternatives that may be developed as a second line treatment for PBC, particularly given the much higher price that we charge for Ocaliva compared to the price of generically available ursodiol. Ocaliva also must be shown to be a safe and tolerable treatment in a commercial use setting as it is intended to be a lifetime therapy for patients eligible for treatment. In NASH and PSC, since there are currently no approved therapies, we do not know the degree to which OCA will be accepted as a therapy, even if approved.

The degree of market acceptance of our product candidates will depend on a number of factors, including:

- limitations or warnings contained in our product candidates' FDA or EMA-approved labeling;
- changes in the standard of care or availability of alternative therapies at similar or lower costs for the targeted indications for any of our product candidates, such as ursodiol for the treatment of PBC;
- limitations in the approved clinical indications for our product candidates;
- demonstrated clinical safety and efficacy compared to other products;

## TABLE OF CONTENTS

- lack of significant adverse side effects;
- sales, marketing and distribution support;
- availability of reimbursement from managed care plans and other third-party payors;
- timing of market introduction and perceived effectiveness of competitive products;
- the degree of cost-effectiveness;
- availability of alternative therapies at similar or lower cost, including generics and over-the-counter products;
- the extent to which our product candidates are approved for inclusion on formularies of hospitals and managed care organizations;
- whether our product candidates are designated under physician treatment guidelines for the treatment of the indications for which we have received regulatory approval;
- adverse publicity about our product candidates or favorable publicity about competitive products;
- convenience and ease of administration of our product candidates; and
- potential product liability claims.

In addition, the potential market opportunity for our products and product candidates is difficult to precisely estimate. While ursodiol is the established standard of care for PBC, a majority of patients while on therapy remain at ALP levels above the upper limit of normal, or ULN. According to our analysis of industry data in PBC, approximately 65% of patients treated with ursodiol experience elevated ALP levels, with approximately 35% of patients experiencing ALP levels greater than 1.67 times ULN. In addition, a small minority of PBC patients (estimated at approximately 3% of patients) are intolerant to ursodiol therapy. Our estimates of the potential market opportunity for Ocaliva for the treatment of PBC include a number of key assumptions related to prevalence rates, patients' access to healthcare, diagnosis rates and patients' response to or tolerance of OCA, which are based on available literature and epidemiology research in PBC, our industry knowledge gained through market research and other methods, industry publications, third-party research reports and other surveys. While we believe that our internal assumptions are reasonable, no independent source has verified such assumptions. If any of these assumptions prove to be inaccurate, then the actual market for Ocaliva in PBC could be smaller than our estimates of our potential market opportunity. If the actual market opportunity for Ocaliva or our product candidates is smaller than we expect, our product revenue may be limited.

If our product candidates are approved, but do not achieve an adequate level of acceptance by physicians, patients, the medical community and healthcare payors, sufficient revenue may not be generated from these products and we may not become or remain profitable. In addition, efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful.

***We have limited sales, marketing or distribution experience and we will have to invest in significant additional resources to develop those capabilities or enter into acceptable third-party sales and marketing arrangements.***

We have limited sales, marketing or distribution experience as a commercial organization. The commercial launch of Ocaliva for PBC represents our first product launch. We also plan to commercialize Ocaliva for PBC in certain other countries outside of the United States and Europe ourselves with a targeted sales force if we receive marketing approval. We may utilize the services of third-party collaborators in certain other jurisdictions. We have not yet decided on our commercialization strategy for OCA in other indications and for our other product candidates. To develop internal sales, distribution and marketing capabilities, we have invested and expect to continue to invest significant additional amounts of financial and management resources.

## TABLE OF CONTENTS

Recruiting and training a commercial organization is expensive and time consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing and distribution capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment could be lost if we cannot retain or reposition our sales and marketing personnel.

For product candidates where we decide to perform sales, marketing and distribution functions ourselves or through third parties, we could face a number of additional risks, including:

- we or our third-party sales collaborators may not be able to attract and build, or retain an effective marketing or sales force;
- the cost of securing or establishing a marketing or sales force may exceed the revenues generated by any products; and
- our direct sales and marketing efforts may not be successful.

We have a collaboration with Sumitomo Dainippon for the development and commercialization of OCA in Japan, China, South Korea and potentially other Asian countries, if approved, and a collaboration with Servier to assist in the development and commercialization of certain of our earlier stage agonists of a dedicated bile acid receptor called TGR5 outside of the United States and Japan, if approved, and may elect to seek additional strategic collaborators for our product candidates. We may have limited or no control over the sales, marketing and distribution activities of these third parties. Our future revenues may depend heavily on the success of the efforts of these third parties.

***If we market products in a manner that violates healthcare fraud and abuse laws, or if we violate government price reporting laws, we may be subject to civil or criminal penalties.***

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal healthcare laws, commonly referred to as “fraud and abuse” laws, have been applied in recent years to restrict certain marketing practices in the pharmaceutical industry. Other jurisdictions such as Europe have similar laws and are enacting more stringent regulations. These laws include false claims and anti-kickback statutes. If we market our products and our products are paid for by governmental programs, it is possible that some of our business activities could be subject to challenge under one or more of these laws.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement to get a false claim paid. The federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for, purchasing, leasing, ordering or arranging for the purchase, lease or order of any healthcare item or service covered by Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers or formulary managers on the other. Although there are several statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing or recommending may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Most states also have statutes or regulations similar to the federal anti-kickback law and federal false claims laws, which apply to items and services covered by Medicaid and other state programs, or, in several states, apply regardless of the payor. Administrative, civil and criminal sanctions may be imposed under these federal and state laws.

Over the past few years, a number of pharmaceutical and other healthcare companies have been prosecuted under these laws for a variety of promotional and marketing activities, such as: providing free trips, free goods, sham consulting fees and grants and other monetary benefits to prescribers; reporting inflated average wholesale prices that were then used by federal programs to set reimbursement rates; engaging in off-label promotion; and submitting inflated best price information to the Medicaid Rebate Program to reduce liability for Medicaid rebates.

## TABLE OF CONTENTS

### ***We will incur significant liability if it is determined that we are promoting any “off-label” use of Ocaliva.***

Physicians are permitted to prescribe drug products for uses that are not described in the product’s labeling and that differ from those approved by the FDA or other applicable regulatory agencies. Off-label uses are common across medical specialties. Although the FDA and other regulatory agencies do not regulate a physician’s choice of treatments, the FDA and other regulatory agencies do restrict communications on the subject of off-label use. Companies are not permitted to promote drugs for off-label uses. Accordingly, we may not promote Ocaliva in the United States for use in any indications other than for the treatment of patients with PBC in combination with ursodiol in adults with an inadequate response to ursodiol or as monotherapy in adults unable to tolerate ursodiol. The FDA and other regulatory and enforcement authorities actively enforce laws and regulations prohibiting promotion of off-label uses and the promotion of products for which marketing approval has not been obtained. A company that is found to have improperly promoted off-label uses will be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. A significant number of pharmaceutical companies have been the target of inquiries and investigations by various governmental authorities in the United States and abroad.

Notwithstanding the regulatory restrictions on off-label promotion, the FDA and other regulatory authorities allow companies to engage in truthful, non-misleading, and non-promotional scientific exchange concerning their products. We intend to continue engaging in medical education activities and communicate with healthcare providers in compliance with all applicable laws, regulatory guidance and industry best practices.

While we have implemented a corporate compliance program based on what we believe are the current best practices, we cannot provide any assurance that governmental authorities will find that our business practices comply with current or future administrative or judicial interpretations of potentially applicable laws and regulations. If we fail to comply with any of these laws and regulations, we could be subject to a range of regulatory actions, including suspension or termination of clinical trials, the failure to approve a product candidate, restrictions on our products or manufacturing processes, withdrawal of Ocaliva or other products from the market, significant fines, disqualification or debarment from participation in federally-funded healthcare programs or other sanctions or litigation, any of which events may have a significant adverse impact on our business.

### ***If any of our current strategic collaborators fails to perform its obligations or terminates its agreement with us, the development and commercialization of the products or product candidates under such agreement could be delayed or terminated and our business could be substantially harmed.***

We currently have strategic collaborations in place relating to certain of our product candidates. We entered into an exclusive license agreement with Sumitomo Dainippon regarding the development and commercialization of Ocaliva for PBC and OCA for NASH in Japan, China and South Korea and provided Sumitomo Dainippon with an option to extend its exclusive license to different indications as well as certain other Asian countries. We entered into a strategic collaboration with Servier initially focused on the identification and optimization of novel TGR5 agonists for the treatment of type 2 diabetes and other associated disorders. Although our licensing and collaboration agreement with Servier expired in September 2015, we have continued our collaborative relationship with Servier while we negotiate a new agreement. These strategic collaborations may not be scientifically or commercially successful due to a number of important factors, including the following:

- Sumitomo Dainippon and Servier have significant discretion in determining the efforts and resources that each will apply to their strategic collaboration with us. The timing and amount of any cash payments, milestones and royalties that we may receive under such agreements will depend on, among other things, the efforts, allocation of resources and successful development and commercialization of our product candidates by Sumitomo Dainippon and Servier under their respective agreements;
- Our agreement with Servier provides it with wide discretion in deciding which novel compounds to advance through the preclinical and clinical development process. It is possible for Servier to reject certain compounds at any point in the research, development and clinical trial process without triggering a termination of their agreement with us;

## TABLE OF CONTENTS

- Our agreement with Sumitomo Dainippon restricts it from developing or commercializing any FXR agonist to treat PBC or NASH during the term of the agreement other than pursuant to the Sumitomo Dainippon agreement and our agreement with Servier restricts it from developing or commercializing any TGR5 receptor agonist during the term of the agreement other than pursuant to the Servier agreement. Subject to these restrictions, it is possible that Sumitomo Dainippon or Servier may develop and commercialize, either alone or with others, or be acquired by a company that has, products that are similar to or competitive with the product candidates that they license from us;
- Sumitomo Dainippon or Servier may change the focus of their development and commercialization efforts or pursue higher-priority programs;
- Sumitomo Dainippon or Servier may, under specified circumstances, terminate their strategic collaborations with us on short notice and for circumstances outside of our control, which could make it difficult for us to attract new strategic collaborators or adversely affect how we are perceived in the scientific and financial communities;
- Sumitomo Dainippon and Servier have, under certain circumstances, the right to maintain or defend our intellectual property rights licensed to them in their territories, and, although we may have the right to assume the maintenance and defense of our intellectual property rights if our strategic collaborators do not, our ability to do so may be compromised by our strategic collaborators' acts or omissions;
- Sumitomo Dainippon or Servier may utilize our intellectual property rights in such a way as to invite litigation that could jeopardize or invalidate our intellectual property rights or expose us to potential liability; and
- Sumitomo Dainippon or Servier may not comply with all applicable regulatory requirements, or fail to report safety data in accordance with all applicable regulatory requirements.

If either Sumitomo Dainippon or Servier fails to develop or effectively commercialize OCA or any TGR5 compounds, respectively, we may not be able to replace them with another collaborator. For example, although Sumitomo Dainippon has informed us that it is exploring the initiation of a Phase 3 clinical trial for OCA in NASH patients intended to support the registration of this indication in Japan, Sumitomo Dainippon may ultimately decide not to pursue such a trial or cease continuing development despite commencing the trial. We may also be unable to obtain, on terms acceptable to us, a license from such strategic collaborator 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.

***We may not be successful in establishing and maintaining development and commercialization collaborations, which could adversely affect our ability to develop certain of our product candidates and our financial condition and operating results.***

Because developing pharmaceutical products, conducting clinical trials, obtaining regulatory approval, expanding manufacturing capabilities and marketing approved products are expensive, we have entered into, and may seek to enter into, collaborations with companies that have more experience and resources than we have. For example, we have entered into collaborations with Sumitomo Dainippon for OCA and Servier for our earlier stage TGR5 program. We may establish additional collaborations for development and commercialization of OCA in territories outside of those licensed by Sumitomo Dainippon or for our earlier stage TGR5 program in the United States or Japan and for other product candidates and research programs, including INT-767 and INT-777. Additionally, if any of our product candidates receives marketing approval, we may enter into sales and marketing arrangements with third parties with respect to our unlicensed territories. If we are unable to maintain our existing arrangements or enter into any new such arrangements on acceptable terms, if at all, we may be unable to effectively market and sell our products in our target markets. We expect to face competition in seeking appropriate collaborators. Moreover, collaboration arrangements are complex and time consuming to negotiate, document and implement and they may require substantial

## TABLE OF CONTENTS

resources to maintain. We may not be successful in our efforts to establish and implement collaborations or other alternative arrangements for the development of our product candidates.

When we collaborate with a third party for development and commercialization of a product candidate, we can expect to relinquish some or all of the control over the future success of that product candidate to the third party. For example, Sumitomo Dainippon has the exclusive rights to OCA in Japan, China and South Korea and a right of first refusal to license OCA in several other Asian countries. Our collaboration partner may not devote sufficient resources to the commercialization of our product candidates or may otherwise fail in their commercialization. The terms of any collaboration or other arrangement that we establish may not be favorable to us. In addition, any collaboration that we enter into, including our collaborations with Sumitomo Dainippon and Servier, may be unsuccessful in the development and commercialization of our product candidates. In some cases, we may be responsible for continuing preclinical and initial clinical development of a product candidate or research program under a collaboration arrangement, and the payment we receive from our collaboration partner may be insufficient to cover the cost of this development. If we are unable to reach agreements with suitable collaborators for our product candidates, we would face increased costs, we may be forced to limit the number of our product candidates we can commercially develop or the territories in which we commercialize them and we might fail to commercialize products or programs for which a suitable collaborator cannot be found. If we fail to achieve successful collaborations, our operating results and financial condition will be materially and adversely affected.

### ***If we fail to develop OCA for additional indications, our commercial opportunity will be limited.***

To date, we have focused the majority of our development efforts on the development of OCA for the second line treatment of PBC. Among our other product candidates, only INT-767 is currently in clinical development. One of our strategies is to pursue clinical development of OCA in NASH and other progressive non-viral liver diseases, to the extent that we have sufficient funding.

PBC is an orphan disease. Since Ocaliva is indicated for use in PBC in combination with ursodiol in adults with an inadequate response to ursodiol or as monotherapy in adults unable to tolerate ursodiol, the market size is expected to be limited. Furthermore, because a significant proportion of PBC patients do not exhibit any symptoms at the time of diagnosis, PBC may be left undiagnosed for a significant period of time. Due to these factors, our ability to grow revenues will be dependent on our ability to successfully develop and commercialize OCA for the treatment of additional indications. In particular, we believe that our future success will depend in large part on the results of our development of OCA for the treatment of NASH. Although NASH is believed to be one of the most prevalent chronic liver diseases worldwide, NASH may be left undiagnosed for a long time and a definitive diagnosis of NASH is currently based on a histological assessment of a liver biopsy, which impacts the ability to easily identify patients. Furthermore, even if we are successful in developing and obtaining marketing approval of OCA for the treatment of NASH, we may not be able to commercialize OCA successfully.

The completion of development, securing of approval and commercialization of OCA for additional indications will require substantial additional funding and is prone to the risks of failure inherent in drug development. We cannot provide you any assurance that we will be able to successfully advance any of these indications through the development process. Even if we receive FDA or EMA approval to market OCA for the treatment of any of these additional indications, we cannot assure you that any such additional indications will be successfully commercialized, widely accepted in the marketplace or more effective than other commercially available alternatives. If we are unable to successfully develop and commercialize OCA for these additional indications, our commercial opportunity will be limited and our business prospects will suffer.

## Risks Related to Our Business and Strategy

*We face competition from other biotechnology and pharmaceutical companies and our operating results will suffer if we fail to compete effectively.*

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. We have competitors in the United States, Europe and other jurisdictions, including major multinational pharmaceutical companies, established biotechnology companies, specialty pharmaceutical and generic drug companies and universities and other research institutions. Many of our competitors have greater financial and other resources, such as larger research and development staff and more experienced marketing and manufacturing organizations. Large pharmaceutical companies, in particular, have extensive experience in clinical testing, obtaining regulatory approvals, recruiting patients and manufacturing pharmaceutical products. These companies also have significantly greater research, sales and marketing capabilities and collaborative arrangements in our target markets with leading companies and research institutions. Established pharmaceutical companies may also invest heavily to accelerate discovery and development of novel compounds or to in-license novel compounds that could make the product candidates that we develop obsolete. As a result of all of these factors, our competitors may succeed in obtaining patent protection and/or FDA or EMA approval or discovering, developing and commercializing drugs for the diseases that we are targeting before we do. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies.

Some of the pharmaceutical and biotechnology companies we expect to compete with include Allergan Plc, AstraZeneca plc, Biotie Therapies Corp. (acquired by Acorda Therapeutics, Inc.), Boehringer Ingelheim GmbH, Bristol-Myers Squibb Company, Conatus Pharmaceuticals Inc., Cymabay Therapeutics, Inc., Dr. Falk Pharma GmbH, Durect Corporation, Enanta Pharmaceuticals, Inc., ENYO Pharma SAS, FibroGen, Inc., FF Pharmaceuticals BV, Galectin Therapeutics Inc., Galmed Medical Research Ltd., Genfit SA, Gilead Sciences, Inc., GlaxoSmithKline, Immuron Ltd., Ionis Pharmaceuticals, Inc., Islet Sciences, Inc., Medivation, Inc., Metacrine, Inc., MiNA Therapeutics, NGM Biopharmaceuticals, Novartis International AG, Novo Nordisk A/S, NuSirt Biopharma, Inc., Protalix Biotherapeutics, Shire plc, Viking Therapeutics, Inc. and Zydus Pharmaceuticals Inc. An investigator-sponsored Phase 3 trial of bezafibrate, a fibrate that has not been approved for commercialization by the FDA and is only available outside of the United States, is ongoing for the treatment of PBC. Genfit SA has an ongoing Phase 3 clinical trial of GFT505, a dual PPAR alpha/delta agonist, in NASH. Genfit is also studying GFT505 for the treatment of PBC. Gilead Sciences, Inc. is conducting multiple Phase 3 clinical trials in NASH patients of various disease severity with selonsertib, an inhibitor of the apoptosis signal-regulating kinase 1. Gilead Sciences, Inc. is also exploring additional studies in NASH for GS-0976, a small molecule allosteric inhibitor that acts at the protein-protein homodimer interface of acetyl-CoA carboxylases acquired from Nimbus Therapeutics, LLC, and an FXR agonist known as GS-9674. Gilead Sciences, Inc. is also studying a number of compounds in other liver diseases including PBC and PSC. A number of other companies have trials in PBC, NASH and other liver diseases we are targeting.

In addition, many universities and private and public research institutes may become active in our target disease areas. The results from our POISE and FLINT trials and the approval of Ocaliva in the United States and the European Union for PBC have brought more attention to our targeted indications and bile acid chemistry. As a result, we believe that additional companies and organizations may seek to compete with us in the future. Our competitors may succeed in developing, acquiring or licensing on an exclusive basis, technologies and drug products that are more effective or less costly than OCA or any other product candidates that we are currently developing or that we may develop, which could render our products obsolete and noncompetitive.

Off-label uses of other potential treatments may limit the commercial potential of our product candidates, especially given the anticipated pricing for our product candidates. For example, while fibrates are not approved for use in PBC, off-label use of fibrate drugs has been reported, though many fibrates are specifically contraindicated for use in PBC due to potential concerns over acute and long-term safety in this patient population. In NASH, a number of treatments, including vitamin E (an antioxidant), insulin sensitizers (such as metformin), antihyperlipidemic agents (such as gemfibrozil), pentoxifylline and ursodiol, are used off-label. Although none of these treatments have been clearly shown in clinical trials to alter the course of the disease, in a previous study conducted by the NASH Clinical Research Network, similar improvements to

## TABLE OF CONTENTS

those observed with OCA in the FLINT trial in certain histological measures of NASH were reported with vitamin E and pioglitazone. Various other treatments, both approved and unapproved, have been used in the other indications we are targeting.

We believe that our ability to successfully compete will depend on, among other things:

- the results of our and our strategic collaborators' clinical trials and preclinical studies;
- our ability to recruit and enroll patients for our clinical trials;
- the efficacy, safety and reliability of Ocaliva and our other product candidates;
- the speed at which we develop our product candidates;
- our ability to design and successfully execute appropriate clinical trials;
- our ability to maintain a good relationship with regulatory authorities;
- the timing and scope of regulatory approvals, if any;
- our ability to commercialize and market any of our product candidates that receive regulatory approval;
- the price of our products;
- adequate levels of reimbursement under private and governmental health insurance plans, including Medicare;
- our ability to protect intellectual property rights related to our products;
- our ability to manufacture and sell commercial quantities of any approved products to the market; and
- acceptance of our product candidates by physicians and other health care providers.

If our competitors market products that are more effective, safer or less expensive than our future products, if any, or that reach the market sooner than our future products, if any, we may not achieve commercial success. In addition, the biopharmaceutical industry is characterized by rapid technological change. Because our research approach integrates many technologies, it may be difficult for us to stay abreast of the rapid changes in each technology. If we fail to stay at the forefront of technological change, we may be unable to compete effectively. Technological advances or products developed by our competitors may render our technologies or product candidates obsolete, less competitive or not economical.

***We depend on third-party contractors for a substantial portion of our operations and may not be able to control their work as effectively as if we performed these functions ourselves.***

We outsource and plan to continue to outsource substantial portions of our operations to third-party service providers, including the conduct of preclinical studies and clinical trials, collection and analysis of data and manufacturing. Although we are currently commercializing Ocaliva using our internal commercial organization, we will likely use the services of third-party vendors in relation to our future commercialization activities, including product sales, marketing and distribution. Our agreements with third-party service providers are on a study-by-study and/or project-by-project basis. Typically, we may terminate the agreements with notice and are responsible for the supplier's previously incurred costs. In addition, a number of third-party service providers that we retain will be subject to the FDA's and EMA's regulatory requirements and similar standards outside of the United States and Europe and we do not have control over compliance with these regulations by these providers. Consequently, if these providers do not adhere to applicable governing practices and standards, the development and commercialization of Ocaliva and our other product candidates could be delayed or stopped, which could severely harm our business and financial condition.

Because we have relied on third parties, our internal capacity to perform these functions is limited to management oversight. Outsourcing these functions involves the risk that third parties may not perform to our standards, may not produce results in a timely manner or may fail to perform at all. Several years ago, we experienced difficulties with a third-party contract manufacturer for OCA, including delays in receiving

## TABLE OF CONTENTS

adequate clinical trial supplies as requested within the requested time periods. We subsequently replaced this manufacturer with other third-party contract manufacturers for OCA. It is possible that we could experience similar difficulties in the future. In addition, the use of third-party service providers requires us to disclose our proprietary information to these parties, which could increase the risk that this information will be misappropriated. There are a limited number of third-party service providers that specialize or have the expertise required to achieve our business objectives. Identifying, qualifying and managing performance of third-party service providers can be difficult, time consuming and cause delays in our development programs. Despite our recent growth, we currently have a small number of employees, which limits the internal resources we have available to identify and monitor third-party service providers. To the extent we are unable to identify, retain and successfully manage the performance of third-party service providers in the future, our business may be adversely affected. We may further be subject to the imposition of civil or criminal penalties if their conduct of clinical trials violates applicable law.

Our third-party service providers generally are not prohibited from providing their services to other biopharmaceutical companies, including companies that currently or may in the future compete with us. For example, certain of our third-party service providers and consultants may be able to develop intellectual property to which we are not entitled under our agreements which may eventually be used to develop products that compete with our products. Although we generally have confidentiality and non-disclosure agreements in place with our third-party service providers and consultants, such third parties may be able to provide services to other companies without violating the terms of our agreements. In addition, although we may seek to enter into non-compete arrangements with our key third-party service providers, such arrangements are difficult to negotiate and we may be unable to successfully enter into such arrangements.

### ***A variety of risks associated with our international business operations and our planned international business relationships could materially adversely affect our business.***

We have a wholly-owned subsidiary in the United Kingdom which serves as our headquarters for our international operations. We also currently have an Italian subsidiary that acts as our legal representative for our clinical trials in the European Union to satisfy European Union regulatory requirements. We have also formed a number of other wholly-owned subsidiaries in Europe and Canada in preparation for the anticipated commercial launch of Ocaliva in PBC in those jurisdictions. Although we are currently commercializing Ocaliva using our internal commercial organization, we will likely use the services of third-party vendors in relation to our future commercialization activities, including product sales, marketing and distribution. In addition, we have entered into collaborations with Sumitomo Dainippon for the development of OCA and Servier for our earlier stage TGR5 program, and we may enter into agreements with other third parties for the development and commercialization of OCA or our other product candidates in international markets. Our international operations and business relationships subject us to additional risks that may materially adversely affect our ability to attain or sustain profitable operations, including:

- differing regulatory requirements for drug approvals internationally;
- potentially reduced protection for intellectual property rights;
- potential third-party patent rights in countries outside of the United States;
- the potential for so-called “parallel importing,” which is what occurs when a local seller, e.g., a pharmacy, faced with relatively high local prices, opts to import goods from another jurisdiction with relatively low prices, rather than buying them locally;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability, particularly in non-U.S. economies and markets, including several countries in Europe;
- compliance with tax, employment, immigration and labor laws for employees traveling abroad;
- taxes in other countries;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;

## TABLE OF CONTENTS

- workforce uncertainty in countries where labor unrest is more common than in the United States;
- production shortages resulting from events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geo-political actions, including war and terrorism, or natural disasters, including earthquakes, volcanoes, typhoons, floods, hurricanes and fires.

For example, we do not know the extent of the impact that the Brexit will have on our business. As a result of the Brexit, it is possible that Scotland and Northern Ireland may each conduct a referendum to decide whether to leave the United Kingdom. Furthermore, other European countries may seek to conduct referenda with respect to continuing membership with the European Union. We do not know to what extent these changes will impact our business. Our ability to conduct our international business out of the United Kingdom may be materially and adversely affected.

### ***Changes in our effective income tax rate could adversely affect our results of operations.***

We are subject to income taxes in the United States and various foreign jurisdictions. Various factors may have favorable or unfavorable effects on our effective income tax rate. These factors include, but are not limited to, interpretations of existing tax laws, changes in tax laws and rates, the accounting for stock options and other stock-based compensation, changes in accounting standards, future levels of research and development spending, changes in the mix and level of pre-tax earnings by taxing jurisdiction, the outcome of examinations by the U.S. Internal Revenue Service and regulators of other jurisdictions, the accuracy of our estimates for unrecognized tax benefits, the realization of deferred tax assets, or by changes to our ownership or capital structure. The impact on our effective income tax rate resulting from the above-mentioned factors and others may be significant and could adversely affect our results of operations.

### ***We have been significantly expanding our operations and the size of our company and will need to continue our expansion to support our NASH program. We may experience difficulties in managing our significant growth.***

From December 31, 2014 to December 31, 2016, our employee base has grown from 136 to 456 employees. As we advance our programs for OCA in NASH and other potential indications and our other product candidates, seek regulatory approval in the United States and elsewhere, increase the number of ongoing product development programs and advance our product candidates through preclinical studies and clinical trials, we will need to increase our product development, scientific and administrative headcount to manage these programs. We will also need to grow our commercial capabilities, which will require us to hire additional personnel for the launch and ongoing marketing and sale of Ocaliva in PBC and any product candidate for which we obtain marketing approval. In addition, in order to continue to meet our obligations as a public company and to support the anticipated longer-term growth in the other functions at our company, we will need to increase our general and administrative capabilities. We are also expanding our operations geographically and formed a number of wholly-owned subsidiaries outside of the United States. In addition to our U.S. offices, we also have an office in London, United Kingdom which serves as our headquarters for our operations in Europe and international markets, and regional offices in a number of these countries. In the longer term, we may further expand our geographical footprint. Our management, personnel and systems currently in place may not be adequate to support this future growth. Furthermore, we may face a number of complexities, such as being subject to national collective bargaining agreements for employees, in some of the countries in which we operate.

Our need to effectively manage our operations, growth and various projects requires that we:

- successfully attract and recruit new employees or consultants with the expertise and experience we will require in the United States, Europe and in other jurisdictions;
- manage our clinical programs effectively, which we anticipate being conducted at numerous clinical sites across the world, and advance our other development efforts;

## TABLE OF CONTENTS

- develop and expand our marketing and sales infrastructure; and
- continue to improve our operational, financial and management controls, reporting systems and procedures.

If we are unable to successfully manage this growth and increased complexity of operations, our business may be adversely affected.

***We may not be able to manage our business effectively if we are unable to attract and retain key personnel and consultants.***

We may not be able to attract or retain qualified personnel and consultants across our organization due to the intense competition for qualified personnel and consultants among biotechnology, pharmaceutical and other businesses. If we are not able to attract and retain necessary personnel and consultants to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development and commercial objectives, our ability to raise additional capital and our ability to implement our business strategy.

Our industry has experienced a high rate of turnover of management personnel in recent years. We are highly dependent on the development, regulatory, commercialization and business development expertise of Mark Pruzanski, our co-founder and president and chief executive officer; David Shapiro, our chief medical officer; and our other key employees and consultants. If we lose one or more of our executive officers, or key employees or consultants, our ability to implement our business strategy successfully could be seriously harmed. Any of our executive officers or key employees or consultants may terminate their employment at any time. Replacing executive officers, key employees and consultants may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain regulatory approval of and commercialize products successfully. Competition to hire and retain employees and consultants from this limited pool is intense, and we may be unable to hire, train, retain or motivate these additional key personnel and consultants.

We have scientific and clinical advisors and consultants, such as our co-founder Professor Roberto Pellicciari, who assist us in formulating our research, development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us and typically they will not enter into non-compete agreements with us. If a conflict of interest arises between their work for us and their work for another entity, we may lose their services. In addition, our advisors may have arrangements with other companies to assist those companies in developing products or technologies that may compete with ours.

***Failure to establish and maintain adequate finance infrastructure and accounting systems and controls could impair our ability to comply with the financial reporting and internal controls requirements for publicly traded companies.***

As a public company, we operate in an increasingly demanding regulatory environment, which requires us to comply with the Sarbanes-Oxley Act of 2002, and the related rules and regulations of the Securities and Exchange Commission, expanded disclosure requirements, accelerated reporting requirements and more complex accounting rules. Company responsibilities required by the Sarbanes-Oxley Act include establishing and maintaining corporate oversight and adequate internal control over financial reporting and disclosure controls and procedures. Effective internal controls are necessary for us to produce reliable financial reports and are important to help prevent financial fraud.

Our compliance with Section 404 of the Sarbanes-Oxley Act has required and will continue to require that we incur substantial accounting expense and expend significant management efforts. Our testing, or the testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls that we would be required to remediate in a timely manner so as to be able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act each year. If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner each year, we could be subject to sanctions or investigations by the Securities and Exchange Commission, the NASDAQ Stock Market or other regulatory authorities which would require additional financial and management resources and could adversely affect the

## TABLE OF CONTENTS

market price of our common stock. Furthermore, if we cannot provide reliable financial reports or prevent fraud, our business and results of operations could be harmed and investors could lose confidence in our reported financial information.

***Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading, which could significantly harm our business.***

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with the regulations of the FDA and non-U.S. regulators, provide accurate information to the FDA and non-U.S. regulators, comply with health care fraud and abuse laws and regulations in the United States and abroad, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the health care industry are subject to extensive laws and regulations in the United States and abroad intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. Misconduct and misappropriation of confidential information by our employees or third parties may also include improper trading in our securities, which may harm our reputation and result in enforcement actions against us. We have adopted a global code of business conduct, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these 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.

***We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for a product candidate and may have to limit its commercialization.***

The use of our product candidates in clinical trials and the sale of any products for which we may obtain marketing approval, such as Ocaliva in PBC, expose us to the risk of product liability claims. Product liability claims may be brought against us or our collaborators by participants enrolled in our clinical trials, patients, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against any such claims, we would incur substantial liabilities. Regardless of merit or eventual outcome, product liability claims may result in:

- withdrawal of clinical trial participants;
- termination of clinical trial sites or entire trial programs;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- decreased demand for our product candidates and loss of revenues;
- impairment of our business reputation;
- diversion of management and scientific resources from our business operations; and
- the inability to commercialize our product candidates or the withdrawal of our products from the market.

We have obtained limited product liability insurance coverage for in the United States for the use of OCA in our U.S. clinical trials and commercial sales and in selected other jurisdictions where we are conducting clinical trials. Our product liability insurance coverage in the United States is currently limited to an aggregate of \$10 million. We have clinical trial and commercial product liability insurance coverage outside of the United States in amounts that vary by country. As such, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover,

## TABLE OF CONTENTS

insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to product liability. We intend to expand our insurance coverage for products to include the sale of commercial products if we obtain marketing approval for our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. Large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us, particularly if judgments exceed our insurance coverage, could decrease our cash resources and adversely affect our business.

***Our insurance policies are expensive and only protect us from some business risks, which will leave us exposed to significant uninsured liabilities.***

We do not carry insurance for all categories of risk that our business may encounter. Some of the policies we currently maintain include general liability, employment practices liability, property, auto, workers' compensation, products liability and directors' and officers' insurance. We do not know, however, if we will be able to maintain insurance with adequate levels of coverage. Any significant uninsured liability may require us to pay substantial amounts, which would adversely affect our financial position and results of operations. Furthermore the increased volatility of our stock price may result in us being required to pay substantially higher premiums for our directors' and officers' insurance than those to which we are currently subject, and may even lead a large number of underwriters to be unwilling to cover us.

***If we engage in an acquisition, reorganization or business combination, we will incur a variety of risks that could adversely affect our business operations or our stockholders.***

From time to time we have considered, and we will continue to consider in the future, strategic business initiatives intended to further the expansion and development of our business. These initiatives may include acquiring businesses, technologies or products or entering into a business combination with another company. If we pursue such a strategy, we could, among other things:

- issue equity securities that would dilute our current stockholders' percentage ownership;
- incur substantial debt that may place strains on our operations;
- spend substantial operational, financial and management resources to integrate new businesses, technologies and products;
- assume substantial actual or contingent liabilities;
- reprioritize our development programs and even cease development and commercialization of our product candidates; or
- merge with, or otherwise enter into a business combination with, another company in which our stockholders would receive cash and/or shares of the other company on terms that certain of our stockholders may not deem desirable.

Although we intend to evaluate and consider acquisitions, reorganizations and business combinations in the future, we have no agreements or understandings with respect to any acquisition, reorganization or business combination at this time.

***Our business and operations would suffer in the event of system failures or data breaches.***

Despite the implementation of security measures and policies, our internal information technology systems, as well as those of our CROs and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our drug development programs, damage to our reputation and/or monetary damages. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach 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 and the further development of our product candidates could be delayed.

## TABLE OF CONTENTS

Our information security systems are subject to laws and regulations requiring that we take measures to protect the privacy and security of certain information we gather and use in our business. For example, the Health Insurance Portability and Accountability Act, or HIPAA, and its implementing regulations impose, among other requirements, certain regulatory and contractual requirements regarding the privacy and security of personal health information. In addition to HIPAA, numerous other federal and state laws, including, without limitation, state security breach notification laws, state health information privacy laws and federal and state consumer protection laws, govern the collection, use, disclosure and storage of personal information.

Various foreign countries where we may process personal information also have, or are developing, laws governing the collection, use, disclosure and storage of personal information. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing amount of focus on privacy and data protection issues that may affect our business. We have in the past relied on adherence to the U.S.-EU Safe Harbor Framework as agreed to and set forth by the U.S. Department of Commerce and the European Commission as a means to legitimize certain transfers of personal information from the European Economic Area, or EEA, to the United States. However, a recent opinion of the European Union Court of Justice, or ECJ, deemed the U.S.-EU Safe Harbor Framework an invalid method of protecting the transfer of personal information from the EEA to the United States. In July 2016, U.S. and European Commission officials adopted a new framework called the EU-U.S. Privacy Shield to govern cross-border flows of personal data. While we are engaging in efforts to address the implications of the EU-U.S. Privacy Shield and other elements of the ECJ opinion and actively employing other means to legitimize the transfer of personal information from the EEA to the United States, we may be unsuccessful in these efforts. Failure to comply with laws regarding data protection could expose us to risk of enforcement actions and the potential for significant penalties as well as the loss of access to certain data from the EU. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and can generate negative publicity, which could harm our business.

### **Risks Related to Our Intellectual Property**

***It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection. If our patent position does not adequately protect our products and product candidates, others could compete against us more directly, which would harm our business, possibly materially.***

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our current and future products and product candidates and the methods used to manufacture them, as well as successfully defending these patents against third-party challenges. Our ability to stop third parties from making, using, selling, offering to sell or importing our products and product candidates is dependent upon the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities.

The patent positions of biotechnology and pharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical patents has emerged to date in the United States or in many jurisdictions outside of the United States. Changes in either the patent laws or interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be enforced in the patents that may be issued from the applications we currently own or may own in the future, or license from third parties. Further, if any patents we obtain or license are deemed invalid and unenforceable, our ability to commercialize or license our technology could be adversely affected.

Others have filed, and in the future are likely to file, patent applications covering products and technologies that are similar or competitive to ours or important to our business. We cannot be certain that any patent application owned by a third party will not have priority over patent applications filed or in-licensed by us, or that we or our licensors will not be involved in interference, derivation, opposition or invalidity proceedings before U.S. or non-U.S. patent offices.

## TABLE OF CONTENTS

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to develop a platform similar to, or better than, ours in a way that is not covered by the claims of our patents;
- others may be able to make compounds that are similar to our products and product candidates but that are not covered by the claims of our patents;
- we might not have been the first to make the inventions covered by our pending patent applications;
- we might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies;
- any patents that we obtain may not provide us with any competitive advantages;
- we may not develop additional proprietary technologies that are patentable; or
- the patents of others may have an adverse effect on our business.

As of December 31, 2016, we were the owner of record of over 110 issued or granted U.S. and non-U.S. patents relating to OCA with claims directed to pharmaceutical compounds, pharmaceutical compositions, methods of making these compounds, and methods of using these compounds in various indications. We were also the owner at that date of record of over 60 pending U.S. and non-U.S. patent applications relating to OCA in these areas.

In addition, as of December 31, 2016, we were the owner of record of over 160 issued or granted U.S. and non-U.S. patents relating to our product candidates other than OCA, with claims directed to pharmaceutical compounds, pharmaceutical compositions, methods of making these compounds and methods of using these compounds in various indications. We were also the owner of record of over 100 pending U.S. and non-U.S. patent applications relating to such other product candidates in these areas.

Patents covering the composition of matter of OCA expire in 2022 at the soonest and 2033 at the latest if the appropriate maintenance renewal, annuity, or other government fees are paid. We expect that the other patents in the OCA portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, would expire from 2022 to 2033. We expect the issued INT-767 composition of matter patent in the United States, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2029. We expect the other patents in the INT-767 portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire from 2027 to 2029. We expect the issued INT-777 composition of matter patent in the United States, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire in 2030. We expect the other patents in the INT-777 portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, to expire from 2028 to 2030.

We have received assignments of rights to the INT-767 patent portfolio from all inventors, with the exception of one inventor. That inventor is contractually obligated to provide an assignment to us. Thus, we believe that we are the owner of the INT-767 patent portfolio by virtue of this contractual obligation and the patent assignments we have received. By virtue of the patent assignments we have received and other contractual obligations owed to us, we believe we are the owner of the INT-777 patent portfolio. Without patent protection on the composition of matter of our products and product candidates, our ability to stop others from using or selling our products and product candidates may be limited.

Due to the patent laws of a country, or the decisions of a patent examiner in a country, or our own filing strategies, we may not obtain patent coverage for all of our products and product candidates or methods involving these candidates in the parent patent application. We plan to pursue divisional patent applications or continuation patent applications in the United States and other countries to obtain claim coverage for inventions which were disclosed but not claimed in the parent patent application.

## TABLE OF CONTENTS

***If we do not obtain protection under the Hatch-Waxman Act and similar legislation outside of the United States by extending the patent terms and obtaining data exclusivity for our products and product candidates, our business may be materially harmed.***

Depending upon the timing, duration and specifics of FDA marketing approval of our products and product candidates, U.S. patents may be eligible for limited extension of patent term under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Act. The Hatch-Waxman Act permits an extension of patent term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, an extension may not be granted because of, for example, failure to apply within applicable deadlines, failure to apply prior to expiration of relevant patents or failure to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than what is requested. If we are unable to obtain patent term extension or restoration or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially.

Our primary composition of matter patent for OCA expires in 2022. In light of the U.S. marketing approval of OCA in PBC in May 2016, we have applied for an extension to the patent term for this patent in the United States through 2027. We expect to take similar actions in other jurisdictions and countries where similar regulations exist. In the event that we are unable to obtain any patent term extensions, the issued composition of matter patents for OCA are expected to expire in 2022 at the soonest and 2033 at the latest, assuming they withstand any challenge. We expect that the other patents for the OCA portfolio, if the appropriate maintenance, renewal, annuity or other governmental fees are paid, would expire from 2022 to 2033.

***We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights.***

If we choose to go to court to stop another party from using the inventions claimed in any patents we obtain, that individual or company has the right to ask the court to rule that such patents are invalid, not infringed, or should not be enforced against that third party. These lawsuits are expensive and would consume time and resources and divert the attention of managerial and scientific personnel even if we were successful in stopping the infringement of such patents. In addition, there is a risk that the court will decide that such patents are not valid or not infringed, and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of such patents is upheld, the court will refuse to stop the other party on the ground that such other party's activities do not infringe our rights to such patents. In addition, the U.S. Supreme Court has modified some tests used by the U.S. Patent and Trademark Office, or USPTO, in granting patents over the past 20 years, which may decrease the likelihood that we will be able to obtain patents and increase the likelihood of challenge of any patents we obtain or license.

***We may infringe the intellectual property rights of others, which may prevent or delay our product development efforts and stop us from commercializing or increase the costs of commercializing our product and product candidates.***

Our success will depend in part on our ability to operate without infringing the proprietary rights of third parties. We cannot guarantee that our products, or manufacture or use of our product candidates, will not infringe third-party patents. Furthermore, a third party may claim that we or our manufacturing or commercialization collaborators are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our products and product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and scientific personnel. There is a risk that a court would decide that we or our commercialization collaborators are infringing the third party's patents and would order us or our collaborators to stop the activities covered by the patents. In that event, we or our commercialization collaborators may not have a viable way around the patent and may need to halt commercialization of the relevant product. In addition, there is a risk that a court will order us or our collaborators to pay the other party damages for having violated the other party's patents. In the future, we may agree to indemnify our commercial

## TABLE OF CONTENTS

collaborators against certain intellectual property infringement claims brought by third parties. The pharmaceutical and biotechnology industries have produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform.

If we are sued for patent infringement, we would need to demonstrate that our products or methods either do not infringe the patent claims of the relevant patent or that the patent claims are invalid, and we may not be able to do this. Proving invalidity is difficult. For example, in the United States, proving invalidity requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. Even if we are successful in these proceedings, we may incur substantial costs and divert management's time and attention in pursuing these proceedings, which could have a material adverse effect on us. If we are unable to avoid infringing the patent rights of others, we may be required to seek a license, which may not be available, defend an infringement action or challenge the validity of the patents in court. Patent litigation is costly and time consuming. We may not have sufficient resources to bring these actions to a successful conclusion. In addition, if we fail to obtain a license, develop or obtain non-infringing technology or defend an infringement action successfully, or have infringed patents declared invalid, we may incur substantial monetary damages, encounter significant delays in bringing our products and product candidates to market and be precluded from manufacturing or selling our products and product candidates.

We cannot be certain that others have not filed patent applications for technology covered by our pending applications, or that we were the first to invent the technology, because:

- some patent applications in the United States may be unpublished or otherwise maintained in secrecy until the patents are issued;
- patent applications in the United States are typically not published until 18 months after the priority date; and
- publications in the scientific literature often lag behind actual discoveries.

Our competitors may have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications, which could further require us to obtain rights to issued patents covering such technologies. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference or derivation proceeding declared by the USPTO to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful if, unbeknownst to us, the other party had independently arrived at the same or similar invention prior to our own invention, resulting in a loss of our U.S. patent position with respect to such inventions. Other countries have similar laws that permit secrecy of patent applications, and such patent applications may be entitled to priority over our applications in such jurisdictions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

***Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.***

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications will be due to be paid to the USPTO and various governmental patent agencies outside of the United States in several stages over the lifetime of the patents and/or applications. We have systems in place to remind us to pay these fees, and we employ a third-party service provider and rely on this service provider to pay these fees due to the USPTO and non-U.S. patent agencies. The USPTO and various non-U.S. governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. However, there are situations in which

## TABLE OF CONTENTS

noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to enter the market and this circumstance would have a material adverse effect on our business.

***We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers. If we are not able to adequately prevent disclosure of trade secrets and other proprietary information, the value of our technology and products could be significantly diminished.***

As is common in the biotechnology and pharmaceutical industries, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that these employees, or we, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

We rely on trade secrets to protect our proprietary technologies, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. We rely in part on confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to protect our trade secrets and other proprietary information. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, others may independently discover our trade secrets and proprietary information. For example, in September 2016, the Department of Health and Human Services adopted new regulations mandating sponsors to publicly post certain data from clinical trials of products subject to FDA regulation. Although the implementation of the regulations may be delayed, this and other transparency initiatives may result in making publicly available information we may consider to be trade secrets or proprietary information. Moreover, the EMA has already adopted a policy of general transparency both in relation to requests under EU freedom of information legislation for access to pre-clinical and clinical research data once marketing authorizations are granted and through proactive disclosure of clinical data on its website. This policy coupled with imminent requirements for public disclosure of clinical research data under a new EU Clinical Trial Regulation, means that public disclosure will ordinarily be made of substantial research data that previously would have been considered commercially confidential. 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 are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

***We have not yet registered all of our trademarks and failure to secure those registrations could adversely affect our business.***

We have applied for and obtained a number of trademarks and service marks to further protect the proprietary position of our products. As of December 31, 2016, we have over 290 trademark and service mark registrations and over 230 pending trademark and service mark applications in the United States and abroad. Our trademark applications may not be allowed for registration or our registered trademarks may not be maintained or enforced. During prosecution of applications for trademark registration, we may receive rejections or refusals. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the USPTO and in comparable agencies in many other jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings have been filed and may in the future be filed against certain of our trademarks, and our trademarks may not survive such proceedings. If we do not secure registrations for our trademarks, we may encounter more difficulty in enforcing them against third parties than we otherwise would.

Trademark protection varies in accordance with local law, and continues in some countries as long as the trademark is used and in other countries as long as the trademark is registered. Trademark registrations generally are for fixed but renewable terms. We cannot provide any assurances that any trademarks or service

## [TABLE OF CONTENTS](#)

marks will be sufficient to prevent competitors from adopting similar names. The adoption of similar names by competitors could impede our ability to build brand identity and lead to customer confusion, which could adversely affect our sales or profitability.

We have received approval from both the FDA and EMA for Ocaliva®, the proprietary name for OCA, as well as the associated logo. The Ocaliva trademarks have registered in jurisdictions, including the United States, member states of the Community Trademark, Australia, Great Britain, New Zealand, Norway, Switzerland, Taiwan and certain other countries.

### **Risks Related to Our Indebtedness**

***Servicing our debt will require significant amounts of cash, and we may not have sufficient cash flow from our business to pay our debt.***

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance the \$460 million aggregate principal amount of 3.25% convertible senior notes due 2023 we issued in July 2016, or convertible notes or any indebtedness we or our subsidiaries may incur in the future depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt, including the convertible notes. If we are unable to generate cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be unfavorable to us or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at the time we seek to refinance such indebtedness. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

***We may incur substantially more debt or take other actions which would affect our ability to pay the principal of and interest on our debt.***

We and our subsidiaries may be able to incur substantial additional debt in the future, some of which may be secured debt. We and our subsidiaries will not be restricted under the terms of the indenture governing the convertible notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of the indenture governing the convertible notes that could have the effect of diminishing our ability to service our debt when due.

***The conditional conversion feature of the convertible notes, if triggered, may adversely affect our financial condition and operating results.***

In the event the conditional conversion feature of the convertible notes is triggered, holders will be entitled to convert their convertible notes at any time during specified periods at their option. If one or more holders elect to convert their convertible notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their convertible notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the convertible notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting method for convertible debt securities that may be settled in cash, such as the convertible notes, is the subject of recent changes that could have a material effect on our reported financial results.***

Under Accounting Standards Codification 470-20, Debt with Conversion and Other Options, which we refer to as ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as the convertible notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the convertible notes is that the equity component is required to be included in the additional paid-in capital section of stockholders' equity on our consolidated balance sheet, and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of

## TABLE OF CONTENTS

the convertible notes. As a result, we will be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the convertible notes to their face amount over the term of the convertible notes. We will report lower net income in our financial results because ASC 470-20 will require interest to include both the current period's amortization of the debt discount and the instrument's coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the convertible notes.

In addition, under certain circumstances, convertible debt instruments (such as the convertible notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the convertible notes will not be included in the calculation of diluted earnings per share except to the extent that the conversion value of the notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the convertible notes, then our diluted earnings per share would be adversely affected.

***Provisions in the indenture governing the convertible notes may deter or prevent a business combination that may be favorable to you.***

If a fundamental change occurs prior to the maturity date of the convertible notes, holders of the convertible notes will have the right, at their option, to require us to repurchase all or a portion of their convertible notes. In addition, if a make-whole fundamental change occurs prior to the maturity date of the convertible notes, we will in some cases be required to increase the conversion rate for a holder that elects to convert its convertible notes in connection with such make-whole fundamental change. Furthermore, the indenture governing the convertible notes prohibits us from engaging in certain mergers or acquisitions unless, among other things, the surviving entity assumes our obligations under the convertible notes and the indenture. These and other provisions in the indenture could deter or prevent a third party from acquiring us even when the acquisition may be favorable to you.

### **Risks Related to Ownership of Our Common Stock**

***An active trading market in our common stock may not be maintained.***

The trading market in our common stock has been extremely volatile. The quotation of our common stock on The NASDAQ Global Select Market does not assure that a meaningful, consistent and liquid trading market will exist. We cannot predict whether an active market for our common stock will be maintained in the future. An absence of an active trading market could adversely affect our stockholders' ability to sell our common stock at current market prices in short time periods, or possibly at all. Additionally, market visibility for our common stock may be limited and such lack of visibility may have a depressive effect on the market price for our common stock. As of December 31, 2016, approximately 34.8% of our outstanding shares of common stock was held by our officers, directors, beneficial owners of 5% or more of our securities (other than FMR LLC, Carmignac Gestion, Capital World Investors, Ameriprise Financial, Inc. and their respective affiliates) and their respective affiliates, which adversely affects the liquidity of the trading market for our common stock, in as much as federal securities laws restrict sales of our shares by these stockholders. If our affiliates continue to hold their shares of common stock, there will be limited trading volume in our common stock, which may make it more difficult for investors to sell their shares or increase the volatility of our stock price.

***We were previously subject to securities class action litigation and may be subject to similar or other litigation in the future, which may divert management's attention.***

We have previously been subject to securities class action lawsuits. In February 2014, two purported securities class actions were filed against us and certain of our officers, which were eventually consolidated. In May 2016, the defendants reached an agreement with the lead plaintiff to seek Court approval of a proposed resolution and the settlement was ultimately granted final approval by the Court in September 2016. While the

## TABLE OF CONTENTS

final judgment and order of the Court included a dismissal of the action with prejudice against all defendants and the defendants did not admit any liability as part of the settlement, the total payment aggregated to \$55.0 million, of which \$10.0 million was paid by our insurers. There may be additional suits or proceedings brought in the future. Monitoring and defending against legal actions, whether or not meritorious, is time-consuming for our management and detracts from our ability to fully focus our internal resources on our business activities, and we cannot predict how long it may take to resolve these matters. In addition, we may incur substantial legal fees and costs in connection with litigation. Although we may receive insurance coverage for certain adversarial proceedings, coverage could be denied or prove to be insufficient. It is possible that we could, in the future, incur judgment or enter into settlement of claims for monetary damages. A decision adverse to our interests could result in the payment of substantial damages and could have a material adverse effect on our business, results of operations and financial condition.

***Our stock price has been and may in the future be volatile, which could cause holders of our common stock and the notes to incur substantial losses.***

The trading price of our common stock has been, and is likely to continue to be, highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Since our initial public offering which occurred in October 2012, the price of our common stock on The NASDAQ Global Select Market has ranged from \$17.96 per share to \$497.00 per share. In addition to the other factors discussed in this “Risk Factors” section, these factors include:

- failure to successfully commercialize Ocaliva for PBC in jurisdictions where we have received marketing authorization or our inability to receive marketing approval for Ocaliva in other jurisdictions;
- adverse results or delays in our clinical trials;
- inability to obtain additional funding;
- any delay in filing an IND, NDA, MAA or comparable submission for any of our products and product candidates and any adverse development or perceived adverse development with respect to the regulatory review of such submission;
- failure to successfully develop and commercialize OCA for indications other than PBC and any of our other product candidates;
- inability to obtain adequate product supply for OCA and our future product candidates or the inability to do so at acceptable prices;
- results of clinical trials of our competitors’ products;
- regulatory actions with respect to our products or our competitors’ products;
- changes in laws or regulations applicable to our products or future products;
- failure to meet or exceed financial projections we may provide to the public;
- failure to meet or exceed the estimates and projections of the investment community;
- actual or anticipated fluctuations in our financial condition and operating results;
- actual or anticipated changes in our growth rate relative to our competitors;
- actual or anticipated fluctuations in our competitors’ operating results or changes in their growth rate;
- competition from existing products or new products that may emerge;
- announcements by us, our collaborators or our competitors of significant acquisitions, strategic collaborations, joint ventures, collaborations or capital commitments;
- issuance of new or updated research or reports by securities analysts;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;

## TABLE OF CONTENTS

- additions or departures of key management or scientific personnel;
- disputes or other developments related to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- announcement or expectation of additional financing efforts;
- significant lawsuits, including patent, stockholder or product liability litigation, involving us;
- sales of our common stock by us, our insiders or our other stockholders;
- failure to adopt appropriate information security systems, including any systems that may be required to support our growing and changing business requirements;
- market conditions for biopharmaceutical stocks in general; and
- general economic, industry and market conditions.

Furthermore, the stock markets in general and the market for biotechnology companies in particular have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations may negatively impact the market price of shares of our common stock, regardless of our actual operating performance. In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future, which could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business. As a result of this volatility, our stockholders could incur substantial losses.

***We have a significant stockholder, which will limit your ability to influence corporate matters and may give rise to conflicts of interest.***

Genextra S.p.A., together with its affiliates, whom we refer to collectively as Genextra, is our largest stockholder. As of December 31, 2016, Genextra owned 6,454,953 shares of our common stock. The shares of common stock owned by Genextra represented approximately 26.0% of our outstanding common stock as of December 31, 2016. Accordingly, Genextra exerts and will continue to exert significant influence over us and any action requiring the approval of the holders of our common stock, including the election of directors and amendments to our organizational documents, such as increases in our authorized shares of common stock and approval of significant corporate transactions. This concentration of voting power makes it less likely that any other holder of common stock or directors of our business will be able to affect the way we are managed and could delay or prevent an acquisition of us on terms that other stockholders may desire.

Furthermore, the interests of Genextra may not always coincide with your interests or the interests of other stockholders, and Genextra may act in a manner that advances its best interests and not necessarily those of other stockholders, including seeking a premium value for its common stock, and might affect the prevailing market price for our common stock. Our board of directors, which consists of nine directors, including one associated with Genextra, has the power to set the number of directors on our board from time to time.

***Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.***

We are subject to the periodic reporting requirements of the Exchange Act. Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

## TABLE OF CONTENTS

These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements or insufficient disclosure due to error or fraud may occur and not be detected.

### ***You may experience future dilution as a result of future equity offerings.***

In the future, we may offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock in order to raise additional capital. We cannot assure you that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share you paid for our shares. Investors purchasing shares or other securities in the future could have rights, preferences or privileges senior to those of existing stockholders and you may experience dilution. You may incur additional dilution upon the exercise of any outstanding stock options or vesting of restricted stock units or awards.

### ***If securities or industry analysts cease publishing research or reports about us, our business or our market, or if they publish inaccurate or unfavorable reports about our stock, the price of our stock and trading volume could decline.***

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about our company. We do not have any control over these analysts, and there can be no assurance that analysts will continue to cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of the analysts covering us fail to regularly publish reports on us, demand for our common stock could decline, which could cause our stock price and trading volume to decline.

### ***Anti-takeover provisions in our restated certificate of incorporation and our restated bylaws, as well as provisions of Delaware law, might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Provisions in our restated certificate of incorporation and restated bylaws, as well as provisions of Delaware law, contain provisions that may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares of our common stock. These provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. Our corporate governance documents include provisions:

- authorizing the issuance of “blank check” convertible preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders, to the extent that no stockholder, together with its affiliates, holds more than 50% of our voting stock;
- eliminating the ability of stockholders to call a special meeting of stockholders;
- permitting our board of directors to accelerate the vesting of outstanding equity awards upon certain transactions that result in a change of control; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

In addition, as a Delaware corporation, we are subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, or DGCL, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock. Any provision of our restated certificate of incorporation or restated bylaws or Delaware law that has the effect of delaying or deterring a

## TABLE OF CONTENTS

change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

The existence of the foregoing provisions and anti-takeover measures may also frustrate or prevent any attempts by our stockholders to replace or remove our current management or members of our board of directors and 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 you could receive a premium for your common stock in an acquisition.

***Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful stockholder claims against us and may reduce the amount of money available to us.***

As permitted by Section 102(b)(7) of the DGCL, our restated certificate of incorporation limits the liability of our directors to the fullest extent permitted by law. In addition, as permitted by Section 145 of the DGCL, our restated certificate of incorporation and restated bylaws provide that we shall indemnify, to the fullest extent authorized by the DGCL, each person who is involved in any litigation or other proceeding because such person is or was a director or officer of our company or is or was serving as an officer or director of another entity at our request, against all expense, loss or liability reasonably incurred or suffered in connection therewith. Our restated certificate of incorporation provides that the right to indemnification includes the right to be paid expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that such advance payment will only be made upon delivery to us of an undertaking, by or on behalf of the director or officer, to repay all amounts so advanced if it is ultimately determined that such director is not entitled to indemnification. If we do not pay a proper claim for indemnification in full within 60 days after we receive a written claim for such indemnification, except in the case of a claim for an advancement of expenses, in which case such period is 20 days, our restated certificate of incorporation and our restated bylaws authorize the claimant to bring an action against us and prescribe what constitutes a defense to such action.

Section 145 of the DGCL permits a corporation to indemnify any director or officer of the corporation against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action (i.e., one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

The rights conferred in the restated certificate of incorporation and the restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons. We have entered into indemnification agreements with each of our officers and directors.

The above limitations on liability and our indemnification obligations limit the personal liability of our directors and officers for monetary damages for breach of their fiduciary duty as directors by shifting the burden of such losses and expenses to us. Although we have increased the coverage under our directors' and officers' liability insurance, certain liabilities or expenses covered by our indemnification obligations may not be covered by such insurance or the coverage limitation amounts may be exceeded. As a result, we may need to use a significant amount of our funds to satisfy our indemnification obligations, which could severely harm our business and financial condition and limit the funds available to stockholders who may choose to bring a claim against our company.

## [TABLE OF CONTENTS](#)

### ***Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.***

As of December 31, 2016 and 2015, we had net operating loss carryforwards, or NOLs, for U.S. Federal income tax purposes of \$562.3 million and \$454.4 million, respectively, which expire between 2024 and 2036. We also have certain state and foreign NOLs in varying amounts depending on the different state and foreign tax laws.

Our ability to utilize our NOLs may be limited under Section 382 of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, or similar rules. The Section 382 limitations apply if an “ownership change” occurs. Generally, an ownership change occurs when certain shareholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). We have evaluated whether one or more ownership changes under Section 382 have occurred since our inception and have determined that there have been at least two such changes. Although we believe that these ownership changes have not resulted in material limitations on our ability to use these NOLs, our ability to utilize these NOLs may be limited due to future ownership changes or for other reasons. Additionally, tax laws limit the time during which NOLs and certain other tax attributes may be utilized against future taxes. As a result, we may not be able to take full advantage of our carryforwards for U.S. federal, state, and foreign tax purposes.

### **Item 1B. Unresolved Staff Comments**

None.

### **Item 2. Properties**

Our corporate headquarters is located in New York, New York, where we lease and occupy an aggregate of approximately 31,400 square feet of office space. The lease for our current corporate headquarters will expire in July 2024. In December 2016, we entered into lease agreements for our new corporate headquarters in the Hudson Yards development site in New York, New York. We will initially lease approximately 49,000 square feet of office space in 10 Hudson Yards, which will act as a temporary headquarters, until we move our corporate headquarters to 55 Hudson Yards, where we will occupy approximately 85,000 square feet of office space. The lease for the space at 10 Hudson Yards will expire at varying times through 2021. The lease for the space at 55 Hudson Yards will expire on the last day of the calendar month in which the 15<sup>th</sup> anniversary of the day preceding the rent commencement date falls; however, we have an option to renew the term of the 55 Lease either for two additional terms of five years each or one additional ten-year term. Rent payments for 55 Hudson Yards will commence on the date that is 12 months after we take possession of the premises.

Our research and development operations are located in San Diego, California, where we lease and clinical development operations are located in New York, New York and San Diego, California, where we lease and occupy approximately 47,000 square feet of space. The lease ends in September 2019; however, we have an option to further extend the lease for an additional five year term at market rates prevailing at such time.

Our wholly owned subsidiary, Intercept Pharma Europe Ltd., or IPEL, also leases and occupies 8,500 square feet of office space in the King’s Cross area of London, United Kingdom for our international headquarters. The lease expires in May 2024. We are the guarantor to IPEL’s underlease for the international headquarters. In December 2016, IPEL returned the office space it subleased from Merck Sharp & Dohme Limited in the King’s Cross area of London, United Kingdom, which constituted approximately 6,000 square feet of space.

### **Item 3. Legal Proceedings**

See Item 1. “Business — Legal Proceedings” of this Annual Report on Form 10-K

### **Item 4. Mine Safety Disclosures**

Not applicable.

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

Our common stock began trading on the NASDAQ Global Market on October 11, 2012 under the symbol “ICPT”. The following table sets forth, for the quarterly periods indicated, the high and low sales prices per share of our common stock as reported on the NASDAQ Global Select Market for each quarter in the years ended December 31, 2016 and 2015.

<b>Year Ended December 31, 2016</b>	<b>High</b>	<b>Low</b>
First quarter	\$ 152.60	\$ 89.76
Second quarter	173.31	127.45
Third quarter	177.93	140.38
Fourth quarter	166.12	96.63

<b>Year Ended December 31, 2015</b>	<b>High</b>	<b>Low</b>
First quarter	\$ 308.28	\$ 144.79
Second quarter	314.88	232.19
Third quarter	285.00	150.00
Fourth quarter	217.99	137.28

**Stockholders**

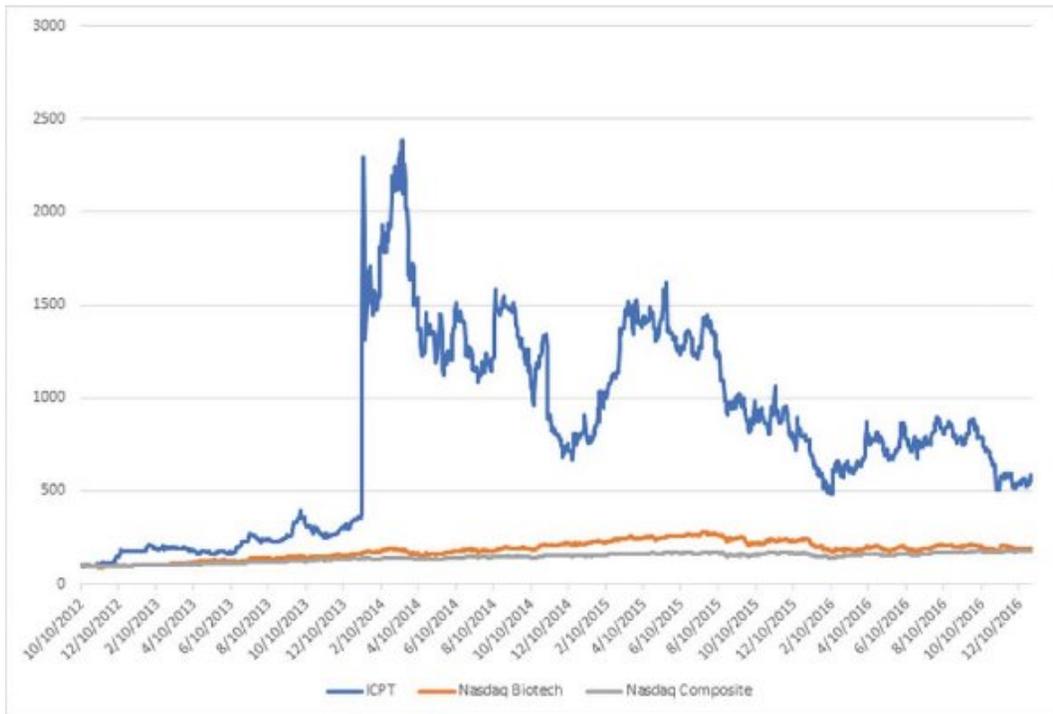
As of January 31, 2017, there were 419 stockholders of record, which excludes stockholders whose shares were held in nominee or street name by brokers.

**Performance Graph**

The following graph illustrates a comparison of the total cumulative stockholder return for our common stock from October 11, 2012 through December 31, 2016 to two indices: the NASDAQ Composite Index and the NASDAQ Biotechnology Index. The graph assumes an initial investment of \$100 on October 10, 2012 in our common stock, the stocks comprising the NASDAQ Composite Index, and the stocks comprising the NASDAQ Biotechnology Index and it assumes the reinvestment of dividends, if any. Historical stockholder return is not necessarily indicative of the performance to be expected for any future periods.

[TABLE OF CONTENTS](#)

**Comparison of Cumulative Total Return\***  
**Among Intercept Pharmaceuticals, Inc., the NASDAQ Composite Index and the NASDAQ Biotechnology Index**



\* \$100 invested on 10/10/2012 in stock or index. Fiscal Year ending December 31, 2016.

The performance graph shall not be deemed to be incorporated by reference by means of any general statement incorporating by reference this Annual Report on Form 10-K into any filing under the Securities Act of 1933, as amended, or Securities Act, or the Securities Exchange Act of 1934, as amended, or Exchange Act, except to the extent that we specifically incorporate such information by reference, and shall not otherwise be deemed filed under such acts.

**Dividend Policy**

We have never paid or declared any cash dividends on our common stock, and we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We intend to retain all available funds and any future earnings to fund the development and expansion of our business. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon a number of factors, including our results of operations, financial condition, future prospects, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant.

**Equity Compensation Plans**

The information required by Item 5 of Form 10-K regarding equity compensation plans is incorporated herein by reference to Item 12 of Part III of this Annual Report.

**Recent Sales of Unregistered Securities**

Except as previously disclosed in our Quarterly Reports on Form 10-Q during 2016, we did not sell any securities that were not registered under the Securities Act.

**Issuer Purchases of Equity Securities**

We did not purchase any of our registered equity securities during the period covered by this Annual Report on Form 10-K.

[TABLE OF CONTENTS](#)**Item 6. Selected Financial Data**

The selected financial data set forth below is derived from our audited consolidated financial statements. The following selected consolidated financial data should be read in conjunction with Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements and the notes thereto included elsewhere in this Annual Report on Form 10-K. The selected financial data in this section are not intended to replace our consolidated financial statements and the related notes. Our historical results are not necessarily indicative of our future results.

	<b>Years Ended December 31,</b>				
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	(in thousands, except per share data)				
<b>Statement of Operations Data:</b>					
Total revenues	\$ 24,951	\$ 2,782	\$ 1,742	\$ 1,622	\$ 2,446
Operating expenses:					
Selling, general and administrative	273,596	119,242	34,601	13,132	5,177
Research and development	153,893	112,696	80,311	27,941	16,183
Total operating expenses	427,489	231,938	114,912	41,073	21,360
Loss from operations	(402,538)	(229,156)	(113,170)	(39,451)	(18,914)
Total other income (expense), net	(10,292)	2,727	(170,056)	(28,341)	(24,729)
Net loss	(412,830)	(226,429)	(283,226)	(67,792)	(43,643)
Dividend on preferred stock, not declared	—	—	—	—	(2,630)
Net loss attributable to common stockholders	\$(412,830)	\$(226,429)	\$(283,226)	\$(67,792)	\$(46,273)
Net loss per share, basic and diluted	\$ (16.74)	\$ (9.56)	\$ (13.63)	\$ (3.76)	\$ (7.36)
Weighted average shares outstanding, basic and diluted	24,663	23,694	20,784	18,029	6,283

	<b>December 31,</b>				
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	(in thousands)				
<b>Balance Sheet Data:</b>					
Cash, cash equivalents and short-term investments	\$ 689,385	\$ 628,055	\$ 239,724	\$ 144,832	\$ 110,194
Total assets	739,253	655,758	254,149	150,319	112,179
Accounts payable, accrued expenses and other liabilities	65,551	45,591	13,459	7,260	3,746
Warrant liability	—	—	—	50,112	30,359
Long-term debt	341,356	—	—	—	—
Accumulated deficit	(1,108,460)	(695,630)	(469,202)	(185,976)	(118,183)
Total stockholders’ equity	314,932	602,149	230,891	82,406	65,912

## [TABLE OF CONTENTS](#)

### **Item 7. 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 consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors. We discuss factors that we believe could cause or contribute to these differences below and elsewhere in this Annual Report on Form 10-K, including those set forth under Item 1A. “Risk Factors” and under “Forward-Looking Statements” in this Annual Report on Form 10-K.*

#### **Overview**

We are a biopharmaceutical company focused on the development and commercialization of novel therapeutics to treat non-viral, progressive liver diseases with high unmet medical need utilizing our proprietary bile acid chemistry. Our marketed product and clinical product candidates have the potential to treat orphan and more prevalent liver diseases for which, currently, there are limited therapeutic solutions.

Our lead product candidate, obeticholic acid, or OCA, is a bile acid analog, a chemical substance that has a structure based on a naturally occurring human bile acid, that selectively binds to and activates the farnesoid X receptor, or FXR. We believe OCA has broad liver-protective properties and may effectively counter a variety of chronic insults to the liver that cause fibrosis, or scarring, which can eventually lead to cirrhosis, liver transplant and death.

OCA was approved in the United States in May 2016 for use in patients with primary biliary cholangitis, or PBC, under the brand name Ocaliva®. We commenced sales and marketing of Ocaliva in the United States shortly after receiving such marketing approval, and Ocaliva is now available to patients primarily through a network of specialty pharmacy distributors. In December 2016, the European Commission granted conditional approval for Ocaliva for the treatment of PBC and we commenced our European commercial launch in January 2017. We have also filed for regulatory approval for OCA in PBC in Canada and plan to file for marketing authorization in other target markets.

OCA is also being developed to treat a variety of other non-viral progressive liver diseases such as nonalcoholic steatohepatitis, or NASH, primary sclerosing cholangitis, or PSC, and biliary atresia. We are currently evaluating our future development strategy for OCA in other indications, for our product candidate INT-767 and for our pre-clinical candidates.

OCA has been tested in five placebo-controlled clinical trials, including a Phase 3 clinical trial in patients with PBC and two Phase 2 clinical trials in patients with NASH or a precursor disease to NASH known as nonalcoholic fatty liver disease, or NAFLD. OCA met the primary efficacy endpoint in each of these trials with statistical significance. In addition, in October 2015, we announced results from a Phase 2 dose ranging trial of OCA in 200 patients with NASH in Japan conducted by our collaborator, Sumitomo Dainippon Pharma Co., Ltd., or Sumitomo Dainippon. The results of this trial were mixed. Sumitomo Dainippon has informed us that it is exploring the initiation of its registrational trials for OCA in NASH patients intended to support the registration of this indication in Japan.

OCA has received orphan drug designation in the United States and the European Union for the treatment of PBC and PSC and breakthrough therapy designation from the U.S. Food and Drug Administration, or FDA, for the treatment of NASH patients with liver fibrosis.

OCA achieved the primary endpoint in a Phase 2b clinical trial for the treatment of NASH, known as the FLINT trial, which was sponsored by the U.S. National Institute of Diabetes and Digestive and Kidney Diseases, or NIDDK, a part of the National Institutes of Health. The FLINT trial was completed in late July 2014. We have an ongoing Phase 3 clinical trial in non-cirrhotic NASH patients with liver fibrosis, known as the REGENERATE trial. REGENERATE includes a pre-planned histology-based interim analysis after 72 weeks of treatment. We are targeting completion of enrollment of the cohort of patients needed for this analysis by mid-2017, with results from the interim analysis anticipated in 2019. We also have an ongoing Phase 2 clinical trial, known as the CONTROL trial, to characterize the lipid metabolic effects of OCA and cholesterol management effects of concomitant statin administration in NASH patients. We completed

## TABLE OF CONTENTS

enrollment of the targeted number of patients for our CONTROL trial in October 2016 and expect top-line results in 2017. We continue to work towards expanding our overall NASH development program with additional trials and studies, including a Phase 3 trial in NASH patients with cirrhosis, which we expect to initiate in 2017.

In addition to PBC and NASH, we continue to invest in research of OCA for additional patient populations with other liver diseases. In September 2016, we completed enrollment of the targeted number of patients in our Phase 2 AESOP trial in PSC to evaluate the effects of 24 weeks of treatment with varying doses of OCA compared to placebo. We expect top-line results from the AESOP trial in 2017. In October 2015, we initiated a Phase 2 clinical trial, known as the CARE trial, of OCA in pediatric patients with biliary atresia. This trial will evaluate the effects of 11 weeks of OCA treatment where patients with biliary atresia will be randomized to varying doses of OCA or a control group receiving only their current treatment. As part of our development program, in November 2015, we initiated a Phase 1 clinical trial of our second product candidate to enter clinical development, called INT-767, a dual FXR and TGR5 agonist, in healthy volunteers. We have completed a Phase 1 clinical trial of our second product candidate to enter clinical development, called INT-767, a dual FXR and TGR5 agonist, in healthy volunteers. Following analysis of the results, we plan to evaluate next steps for a Phase 2 trial of INT-767 in NASH patients with liver fibrosis in 2017.

Our current patents for OCA are scheduled to expire at various times through 2033. Our current plan is to commercialize OCA ourselves in the United States and Europe for the treatment of PBC, NASH and other indications primarily by targeting physicians who specialize in the treatment of liver and intestinal diseases, including both hepatologists and gastroenterologists. We own worldwide rights to OCA except for Japan, China and Korea, where we have exclusively licensed OCA to Sumitomo Dainippon along with an option to exclusively license OCA in certain other Asian countries. We own or have rights to various trademarks, copyrights and trade names used in our business, including Ocaliva.

Our net loss for the year ended December 31, 2016 and 2015 was approximately \$412.8 million and \$226.4 million, respectively. As of December 31, 2016, we had an accumulated deficit of approximately \$1.1 billion. Substantially all our net losses resulted from costs incurred in connection with our research and development programs and from selling, general and administrative costs associated with our operations.

We expect to continue to incur significant expenses and operating losses for at least the next several years as we:

- continue to commercialize Ocaliva for PBC in the United States and Europe;
- seek regulatory approval for and prepare to commercially launch Ocaliva for PBC in other jurisdictions;
- develop and seek regulatory approval for OCA in NASH and other indications; and
- add infrastructure and personnel in the United States and internationally to support our product development and commercialization efforts and operations as a public company.

We anticipate that we will need to raise additional capital to commercialize OCA on a worldwide basis and continue our research and development activities in relation to OCA and our other pipeline candidates. Until such time, if ever, as we can generate substantial revenue from product sales, we expect to finance our operating activities through a combination of equity offerings, debt financings, government or other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements. However, we may be unable to raise additional funds or enter into such other arrangements when needed on favorable terms or at all. Our failure to raise additional capital or enter into such other arrangements as and when needed would have a negative impact on our financial condition and our ability to develop our product candidates.

## [TABLE OF CONTENTS](#)

Our principal executive offices are in New York, New York. We also have administrative offices in San Diego, California and London, United Kingdom.

### **Recent Developments**

#### ***Modifications to Phase 3 REGENERATE Trial in NASH Patients With Liver Fibrosis***

On February 10, 2017, we provided an update to our ongoing Phase 3 REGENERATE trial evaluating OCA in NASH patients with liver fibrosis.

Based on discussions with the FDA, the primary endpoint for the interim analysis for REGENERATE may now be achieved based on one of: (i) the proportion of OCA-treated patients relative to placebo achieving at least one stage of liver fibrosis improvement with no worsening of NASH (defined as no increase in hepatocellular ballooning or lobular inflammation) or (ii) the proportion of OCA-treated patients relative to placebo achieving NASH resolution with no worsening of liver fibrosis. Prior to this modification of the interim analysis, each of the two endpoints was required to be achieved as a co-primary endpoint. Furthermore, we selected a definition for NASH resolution for the trial, which defines a responder as a patient achieving a histologic score of 0 for ballooning and 0 or 1 for inflammation.

In a retrospective analysis of data from the Phase 2 FLINT trial conducted in a REGENERATE-matched patient cohort, approximately 43% of OCA-treated patients as compared to approximately 21% of patients on placebo achieved at least a one stage improvement in liver fibrosis without any worsening of NASH ( $p=0.0059$ ). In a similar retrospective analysis on the FLINT data using the definition we selected for NASH resolution, approximately 20% of OCA-treated patients as compared to approximately 6% of patients on placebo achieved NASH resolution with no worsening of fibrosis ( $p=0.0289$ ).

As a result of these changes, we anticipate that the interim analysis cohort for REGENERATE will consist of approximately 750 NASH patients with stage 2 or 3 fibrosis. We also anticipate completing the enrollment of the interim analysis cohort by mid-2017, with data from the interim analysis anticipated in 2019.

#### ***Appointment of Jerome B. Durso as Chief Operating Officer***

On February 23, 2017, we announced the appointment of Jerome B. Durso as our new chief operating officer. Mr. Durso commenced his employment with us on February 23, 2017.

Mr. Durso, age 49, brings nearly 25 years of experience in building and leading commercial and business operations at life sciences companies both in the United States and abroad. Mr. Durso has spent the majority of his career at Sanofi, a global pharmaceutical company, where he most recently served as senior vice president, chief commercial officer of the global diabetes division from 2011 through 2015. From 2010 to 2011, Mr. Durso was senior vice president, chief commercial officer of Sanofi's U.S. pharmaceuticals business. Prior to that, he served in a number of commercial leadership roles of increasing responsibility in business unit and brand management, marketing and sales since he first joined Sanofi in 1993. Mr. Durso currently serves as an advisory board member of the Robert Wood Johnson University Hospital Somerset in Somerville, New Jersey. Mr. Durso earned his bachelor degree in marketing from the University of Notre Dame.

## [TABLE OF CONTENTS](#)

### Results of Operations

#### Comparison of the Years Ended December 31, 2016 and 2015

The following table summarizes our results of operations for the years ended December 31, 2016 and 2015, together with the changes in those items in dollars and as a percentage:

	<u>Years Ended December 31,</u>		<u>Dollar</u> <u>Change</u>	<u>% Change</u>
	<u>2016</u>	<u>2015</u>		
	(in thousands)			
Revenue:				
Product revenue, net	\$ 18,169	\$ —	\$ 18,169	N/M
Licensing revenue	6,782	2,782	4,000	144%
Total revenue	<u>24,951</u>	<u>2,782</u>	<u>22,169</u>	797%
Operating expenses:				
Selling, general and administrative	273,596	119,242	154,354	129%
Research and development	153,893	112,696	41,197	37%
Total operating expenses	<u>427,489</u>	<u>231,938</u>	<u>195,551</u>	84%
Other income (expense):				
Interest expense	(14,196)	—	(14,196)	N/M
Other income, net	3,904	2,727	1,177	43%
Total other income (expense)	<u>(10,292)</u>	<u>2,727</u>	<u>(13,019)</u>	N/M
Net loss	<u>\$ (412,830)</u>	<u>\$ (226,429)</u>	<u>\$ (186,401)</u>	82%

\* N/M = not meaningful.

#### Revenues

Product revenue, net was \$18.2 million and \$0 for the years ended December 31, 2016 and 2015, respectively. We commenced our commercial launch in the United States for Ocaliva in PBC in June 2016. For the years ended December 31, 2016 and 2015, licensing revenue was \$6.8 million and \$2.8 million, respectively, which resulted from the recognition of development and regulatory milestones and amortization of the up-front payments under the collaboration agreement with Sumitomo Dainippon.

#### Selling, general and administrative expenses

Selling, general and administrative expenses were \$273.6 million and \$119.2 million for the years ended December 31, 2016 and 2015, respectively. The \$154.4 million net increase primarily reflects additional personnel-related costs of approximately \$50.8 million to support our commercial and international initiatives, a one-time net expense of approximately \$45.0 million attributable to the settlement of a purported securities class action lawsuit and increased expenses of approximately \$27.5 million in market research and Ocaliva commercialization activities. Because of these initiatives, indirect expenses (rent, travel, and product related legal costs) and consultant spend increased by \$19.1 million and \$12.0 million, respectively.

#### Research and development expenses

Research and development expenses were \$153.9 million and \$112.7 million for the years ended December 31, 2016 and 2015, respectively, representing a net increase of \$41.2 million. This net increase in research and development expense primarily reflects an increase in OCA research and development activities of approximately \$38.6 million to support our development activities and an increase of \$7.5 million of compensation-related costs, partially offset by a decrease of indirect costs of approximately \$4.9 million.

#### Interest expense

Interest expense was \$14.2 million and \$0 for the years ended December 31, 2016 and 2015, respectively, due to the issuance of our 3.25% convertible senior notes due 2023, or convertible notes, in July 2016.

## TABLE OF CONTENTS

### *Other income, net*

Other income, net was \$3.9 million and \$2.7 million for the years ended December 31, 2016 and 2015, respectively. The \$1.2 million increase is primarily attributable to interest income earned on cash, cash equivalents and investment securities, which increased compared to the prior year period as a result of increases in cash and investment balances primarily due to the net proceeds from the issuance of our convertible notes.

### *Income Taxes*

For the years ended December 31, 2016 and 2015, no income tax expense or benefit was recognized. Our deferred tax assets are comprised primarily of net operating loss carryforwards. We maintain a full valuation allowance on our deferred tax assets since we have not yet achieved sustained profitable operations. As a result, we have not recorded any income tax benefit since our inception.

### *Comparison of the Years Ended December 31, 2015 and 2014*

The following table summarizes our results of operations for the years ended December 31, 2015 and 2014, together with the changes in those items in dollars and as a percentage:

	<u>Years Ended December 31,</u>		<u>Dollar</u>	
	<u>2015</u>	<u>2014</u>	<u>Change</u>	<u>% Change</u>
	(in thousands)			
Revenue:				
Licensing revenue	2,782	1,742	1,040	60%
Total revenue	2,782	1,742	1,040	60%
Operating expenses:				
Selling, general and administrative	119,242	34,601	84,641	245%
Research and development	112,696	80,311	32,385	40%
Total operating expenses	231,938	114,912	117,026	102%
Other income (expense):				
Revaluation of warrants	—	(170,832)	170,832	-100%
Other income, net	2,727	776	1,951	251%
Total other income (expense)	2,727	(170,056)	172,783	N/M
Net loss	<u>\$ (226,429)</u>	<u>\$ (283,226)</u>	<u>\$ 56,797</u>	-20%

\* N/M = not meaningful.

### *Revenues*

For the years ended December 31, 2015 and 2014, licensing revenue was \$2.8 million and \$1.7 million, respectively, which resulted from the recognition of development milestones and amortization of the up-front payments under the collaboration agreement with Sumitomo Dainippon.

### *Selling, general and administrative expenses*

Selling, general and administrative expenses were \$119.2 million and \$34.6 million in the years ended December 31, 2015 and 2014, respectively. The \$84.6 million net increase primarily reflects increased expenses of approximately \$41.4 million related to pre-commercialization activities, which include marketing and public relations. We also increased personnel to manage our increased operational activities, resulting in increased compensation and related benefit costs of approximately \$34.0 million. Additionally, there was increased operating costs such as legal, facilities and technology-related expenses of approximately \$9.2 million.

### *Research and development expenses*

Research and development expenses were \$112.7 million and \$80.3 million for the years ended December 31, 2015 and 2014, respectively, representing a net increase of \$32.4 million. This net increase in research and development expense primarily reflects an increase in OCA research and development activities

## TABLE OF CONTENTS

of approximately \$4.6 million to support our clinical operations, an increase in research and discovery expenses of \$4.8 million, and additional personnel on our research and development team to manage the increased activities around our OCA program and other research and discovery initiatives, resulting in approximately \$18.0 million of increased compensation-related costs and approximately \$5.0 million of indirect costs.

### *Other income, net*

Other income, net was \$2.7 million and \$776,000 for the years ended December 21, 2015 and 2014, respectively. This increase of \$2.0 million was primarily attributable to interest income earned on cash, cash equivalents and investment securities, which increased compared to the prior year period primarily due to our two equity financings in early 2015.

### *Income taxes*

For the year ended December 31, 2015 and 2014, no income tax expense or benefit was recognized. Our deferred tax assets are comprised primarily of net operating loss carryforwards. We maintain a full valuation allowance on our deferred tax assets since we have not yet achieved sustained profitable operations. As a result, we have not recorded any income tax benefit since our inception.

## **Liquidity and Capital Resources**

### ***Sources of Liquidity***

As of December 31, 2016, we had an accumulated deficit of \$1.1 billion. We anticipate that we will continue to incur losses for at least the next several years. We expect that our research and development and selling, general and administrative expenses will continue to increase and, as a result, we will need additional capital to fund our operations, which we may seek to obtain through a combination of equity offerings, debt financings, government or other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements.

We have funded our operations primarily through the sale of common stock, preferred stock, convertible notes and warrants and payments received under our collaboration agreements totaling approximately \$1.4 billion (net of issuance costs of \$46.1 million), including \$29.7 million in net proceeds from our Series C financing in August 2012, \$78.7 million in net proceeds from our initial public offering in October 2012, \$61.2 million in net proceeds from our follow-on public offering in June 2013, \$183.5 million in net proceeds from a follow-on public offering in April 2014, \$191.6 million in net proceeds from a follow-on public offering in February 2015, \$367.1 million in net proceeds from the follow-on offering in April 2015, \$447.6 million in net proceeds from the issuance of the convertible notes in July 2016, and the receipt of \$22.0 million in up-front payments and milestones under our licensing and collaboration agreements with Sumitomo Dainippon and Servier. As of December 31, 2016, we had cash, cash equivalents and investment securities of \$689.4 million. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with a view to liquidity and capital preservation. Currently, our funds are held in cash and money market bank accounts and investments, all of which have maturities of less than two years.

### ***Cash Flows***

The following table sets forth the significant sources and uses of cash for the periods set forth below:

	<b>Years Ended December 31,</b>		
	<b>2016</b>	<b>2015</b>	<b>2014</b>
	(in thousands)		
Net cash provided by (used in):			
Operating activities	\$ (342,441)	\$ (162,902)	\$ (87,738)
Investing activities	(60,135)	(389,472)	(96,585)
Financing activities	414,382	565,469	190,983
Effect of exchange rate changes	(873)	(376)	—
Net increase in cash and cash equivalents	<u>\$ 10,933</u>	<u>\$ 12,719</u>	<u>\$ 6,660</u>

## TABLE OF CONTENTS

*Operating Activities* . Net cash used in operating activities of \$342.4 million for the year ended December 31, 2016 was primarily a result of our \$412.8 million net loss partially offset by net changes in operating assets and liabilities of \$8.4 million, \$46.2 million for stock-based compensation, \$3.8 million for depreciation, \$6.2 million for accretion of the discount on the convertible notes and the amortization of investment premium of \$4.9 million.

Net cash used in operating activities of \$162.9 million for the year ended December 31, 2015 was primarily a result of our \$226.4 million net loss partially offset by net changes in operating assets and liabilities of \$21.3 million, \$34.2 million for stock-based compensation, \$1.7 million for depreciation and the amortization of investment premium of \$6.3 million.

Net cash used in operating activities of \$87.7 million for the year ended December 31, 2014 was primarily a result of our \$283.2 million net loss and net changes in operating assets and liabilities of approximately \$700,000 offset by the add-back of non-cash expense of \$170.8 million for warrant liability revaluation, \$20.1 million for stock-based compensation, \$443,000 for depreciation and the amortization of interest premium of \$3.4 million.

*Investing Activities* . For the year ended December 31, 2016, net cash used in investing activities primarily reflects the purchase of investment securities of \$511.5 million, partially offset by the sale of investment securities of \$456.5 million and capital expenditures of \$5.1 million primarily related to our offices.

For the year ended December 31, 2015, net cash used in investing activities primarily reflects the purchase of investment securities of \$640.7 million, partially offset by the sale of investment securities of \$257.2 million to fund operations and expenditures for leasehold improvements of \$5.9 million primarily for our King's Cross, London facility and the expansion of our New York headquarters.

For the year ended December 31, 2014, net cash used in investing activities reflects the purchase of investment securities of \$204.3 million, partially offset by the sale of investments securities of \$112.4 million to fund operations and \$4.6 million in purchases related to the leasehold improvements for the relocation of our San Diego facility.

*Financing Activities* . Net cash provided by financing activities in the year ended December 31, 2016 consisted primarily of the issuance of our convertible notes that occurred in July 2016 of \$447.6 million, net of issuance cost, and \$5.2 million from the exercise of options to purchase common stock, partially offset by payments of \$38.4 million for the capped call transactions related to our convertible notes

Net cash provided by financing activities in the year ended December 31, 2015 consisted primarily of net proceeds of the February 2015 public offering of \$191.6 million, the April 2015 public offering of \$367.2 million, and \$6.7 million from the exercise of options to purchase common stock.

Net cash provided by financing activities in the year ended December 31, 2014 consisted primarily of net proceeds of \$183.5 million from the completion of our April 2014 public offering and \$7.5 million from the exercise of options and warrants to purchase common stock.

### **Future Funding Requirements**

To date, we have not generated significant product sales revenues. While we commenced our commercial launch of Ocaliva for use in PBC in the United States and Europe, we cannot predict the period, if any, in which material net cash inflows from sales of OCA or our other product candidates can sustain our operations. We expect our expenses to increase in connection with our ongoing development activities, particularly as we continue the research, development and clinical trials of, and seek regulatory approval for, our product candidates.

We have incurred and expect to incur additional costs associated with our plans to further expand our operations in the United States, Europe and in certain other countries. In addition, subject to obtaining regulatory approval of any of our product candidates, we expect to incur significant commercialization expenses for product sales, marketing, manufacturing and distribution. As part of our longer-term strategy, we also anticipate incurring expenses in connection with increases in our product development, scientific,

## TABLE OF CONTENTS

commercial and administrative personnel and expansion of our infrastructure in the United States and abroad. We anticipate that we will need substantial additional funding in connection with our continuing operations.

As of December 31, 2016, we had \$689.4 million in cash, cash equivalents and investment securities. We currently project adjusted operating expenses in the range of \$380 million to \$420 million in the fiscal year ending December 31, 2017, which excludes stock-based compensation and other non-cash items. These expenses are planned to support the continued commercialization of Ocaliva in PBC in the United States and other markets, the continued clinical development for OCA in PBC and NASH and PSC and the continued development of INT-767 and our other earlier stage pipeline programs. We may make additional investments over 2017 as our business evolves. Our adjusted operating expense estimate for 2017 is higher than our adjusted operating expenses for 2016 reflecting continued investment in clinical development programs and commercialization activities.

Adjusted operating expense is a financial measure not calculated in accordance with U.S. generally accepted accounting principles, or GAAP. We anticipate that stock-based compensation expense will represent the most significant non-cash item that is excluded from adjusted operating expenses as compared to operating expenses under GAAP. For the year ended December 31, 2016, adjusted operating expense also excludes a one-time \$45 million net expense for the settlement of a purported class action lawsuit. See “Non-GAAP Financial Measures” for more information.

Due to the many variables inherent to the development and commercialization of novel therapies and our rapid growth and expansion, we currently cannot accurately and precisely predict the duration beyond mid-2018 over which we expect our cash and cash equivalents to be sufficient to fund our operating expenses and capital expenditure requirements. However, we currently believe that our cash and cash equivalents will be sufficient for us to:

- continue the initial commercialization of Ocaliva for PBC in the United States and the European Union;
- prepare for and initiate the commercial launch of Ocaliva in PBC in certain other target markets across the world, but not commercially launch Ocaliva in PBC in non-target countries across the world;
- continue and expand our clinical development programs for OCA in PBC and NASH, such as continuing, but not completing, our planned Phase 3 clinical program for OCA in NASH, including the REGENERATE trial, and our ongoing COBALT confirmatory clinical outcomes trial of OCA in PBC; and
- advance the continued development of INT-767, for which we completed a Phase 1 clinical trial in 2016, and our preclinical compounds, but not completing the clinical or preclinical development needed to obtain regulatory approval for and commercialize INT-767 or our preclinical compounds.

Accordingly, we will continue to require substantial additional capital in connection with our continuing operations, including continuing our commercialization plans and our research and development activities and building our global infrastructure to support these activities.

The amount and timing of our future funding requirements will depend on many factors, including:

- the rate of progress and cost of our continued commercialization activities for Ocaliva in PBC in the United States and the European Union;
- our ability to receive marketing approval of Ocaliva for PBC in countries outside of the United States and the European Union based on our regulatory submissions package and our work completed to date, including the willingness of the relevant regulatory authorities to accept the POISE trial, which is our completed Phase 3 clinical trial for PBC;
- the degree of effort and time needed to prepare for and initiate the commercial launches of Ocaliva in PBC outside of the United States and the European Union if we receive marketing authorization;

## TABLE OF CONTENTS

- the progress, costs, results of and timing of our clinical development programs for OCA in PBC, NASH and other indications, such as the sufficiency of the REGENERATE trial to be accepted as the sole pivotal trial for marketing approval or the acceptability of a surrogate endpoint for accelerated approval of OCA for the treatment of NASH and any modifications we may be required to make to the COBALT trial as part of our post-marketing requirements to the FDA or the EMA;
- the outcome, costs and timing of seeking and obtaining FDA, EMA and any other regulatory approvals;
- the expansion of our research and development activities and the product candidates that we pursue, including INT-767 and our product candidates in preclinical development such as INT-777;
- the expansion of our operations, personnel and the size of our company and our need to continue to expand in the longer term;
- the costs associated with securing and establishing manufacturing capabilities and procuring the materials necessary for our products and product candidates;
- market acceptance of our products and product candidates, which may be affected by reimbursement from payors;
- the costs of acquiring, licensing or investing in businesses, products, product candidates and technologies;
- our ability to maintain, expand and defend the scope of our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with the licensing, filing, prosecution, defense and enforcement of any patents or other intellectual property rights;
- the effect of competing technological and market developments; and
- other cash needs that may arise as we continue to operate our business.

We have no committed external sources of funding. Until such time, if ever, as we can generate substantial revenue from product sales to sustain our operations, we expect to finance our cash needs through a combination of equity offerings, debt financings, government or other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interests of our common stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our common stockholders. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through government or other third-party funding, marketing and distribution arrangements or other collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or to grant licenses on terms that may not be favorable to us.

### **Critical Accounting Policies and Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

## TABLE OF CONTENTS

While our significant accounting policies are more fully described in note 3 to our consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe that the following accounting policies are the most critical for fully understanding and evaluating our financial condition and results of operations.

### **Revenue Recognition**

#### *Product Revenue, Net*

Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence that an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. When the revenue recognition criteria are not met, we defer the recognition of revenue by recording deferred revenue on the balance sheet until such time that all criteria are met.

Beginning in June 2016, subsequent to the U.S. approval of Ocaliva for the treatment of PBC, we sell Ocaliva in the United States principally to a limited number of specialty pharmacies which dispense the product directly to patients. The specialty pharmacies are referred to as our customers.

We provide the right of return to our customers for unopened product for a limited time before and after its expiration date. Given our limited sales history for Ocaliva and the inherent uncertainties in estimating product returns, we have determined that the shipments of Ocaliva made to our customers thus far do not meet the criteria for revenue recognition at the time of shipment. Accordingly, we recognize revenue when the product is sold through by our customers, provided all other revenue recognition criteria are met. We invoice our customers upon shipment of Ocaliva to them and record accounts receivable, with a corresponding liability for deferred revenue equal to the gross invoice price. We then recognize revenue when Ocaliva is sold through as specialty pharmacies dispense product directly to the patients.

We recognized net sales of Ocaliva of \$18.2 million for the year ended December 31, 2016. We also recorded \$3.9 million in deferred revenues recorded in the short-term portion of deferred revenue on our balance sheet, which represents product shipped to distributors, but not sold through as of December 31, 2016.

We have written contracts with each of our customers and delivery occurs when the customer receives Ocaliva. We evaluate the creditworthiness of each of our customers to determine whether collection is reasonably assured. In order to conclude that the price is fixed and determinable, we must be able to (i) calculate our gross product revenues from the sales to our customers and (ii) reasonably estimate our net product revenues. We calculate gross product revenues based on the wholesale acquisition cost that we charges our customers for Ocaliva. We estimate net product revenues by deducting from our gross product revenues (i) trade allowances, such as invoice discounts for prompt payment and customer fees, (ii) estimated government rebates and discounts related to Medicare, Medicaid and other government programs, and (iii) estimated costs of incentives offered to certain indirect customers including patients.

#### *Trade Allowances*

We provide invoice discounts on Ocaliva sales to certain of our customers for prompt payment and records these discounts as a reduction to gross product revenues. These discounts are based on contractual terms.

#### *Rebates and Discounts*

We contract with the Centers for Medicare & Medicaid Services (“CMS”) and other government agencies to make Ocaliva available to eligible patients. As a result, we estimate any rebates and discounts and deduct these estimated amounts from our gross product revenues at the time the revenues are recognized. Our estimates of rebates and discounts are based on the government mandated discounts, which are statutorily-defined and applicable to these government funded programs. These estimates are recorded in accrued liabilities on the condensed consolidated balance sheet.

#### *Other Incentives*

Other incentives that we offer to indirect customers include co-pay assistance cards provided for PBC patients whom reside in states that permit co-pay assistance programs. Our co-pay assistance program is intended to reduce each participating patient’s portion of the financial responsibility for Ocaliva purchase price

## TABLE OF CONTENTS

to a specified dollar amount. We estimate each period the amount of co-pay assistance provided to eligible patients based on the terms of the program when product is dispensed by the specialty pharmacies to the patients. These estimates are based on redemption information provided by third party claims processing organizations and are recorded in accrued liabilities on the condensed consolidated balance sheet.

### ***Valuation of Stock-Based Compensation***

We record the fair value of stock options, restricted stock units, or RSUs, and restricted stock awards, or RSAs, issued to employees as of the grant date as compensation expense. We recognize compensation expense over the requisite service period, which is generally the vesting period. For non-employees, we also record stock options, RSUs and RSAs at their fair value as of the grant date. We then periodically re-measure the awards to reflect the current fair value at each reporting period until the non-employee completes the performance obligation or the date on which a performance commitment is reached. Expense is recognized over the related service period.

We calculate the fair value of stock-options using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the use of assumptions, including stock price volatility, the expected life of stock options, risk free interest rate and the fair value of the underlying common stock on the date of grant. Our key assumptions are:

- The expected volatility was estimated based upon the historical volatility information of peer companies for each respective reporting period. We calculated expected volatility based on reported data for selected reasonably similar publicly traded companies for which the historical information is available. For the purpose of identifying peer companies, we consider characteristics such as industry, length of trading history, similar vesting terms and in-the-money option status.
- The assumed dividend yield is based on our expectation of not paying dividends for the foreseeable future.
- The expected term of options granted represents the period of time the options are expected to be outstanding.
- We determine the risk-free interest rate by reference to implied yields available from U.S. Treasury securities with a remaining term equal to the expected life assumed at the date of grant.
- We estimate forfeitures based on our historical analysis of actual stock option forfeitures.

We expect the impact of stock-based compensation may fluctuate in future periods due to the potential changes in the value of our common stock, changes to our headcount and the award of additional stock option and other equity grants to our personnel.

### ***Convertible Senior Notes and Capped Call Transactions***

In July 2016, we completed an underwritten public offering of \$460.0 million in aggregate principal amount of 3.25% convertible senior notes due 2023, or the convertible notes. After deducting the underwriting discounts and offering expenses of approximately \$12.4 million, the net proceeds from the convertible notes offering were approximately \$447.6 million. In connection with the offering, we entered into an indenture, as supplemented by the First Supplemental Indenture relating to the convertible notes, or collectively the Indenture, with U.S. Bank National Association, a national banking association, as trustee governing the convertible notes. The convertible notes bear interest at a rate of 3.25% per annum, payable semi-annually on January 1 and July 1 of each year, beginning on January 1, 2017. The convertible notes mature on July 1, 2023, unless earlier repurchased, redeemed or converted. Holders may convert the convertible notes at their option at any time prior to the close of business on the business day immediately preceding January 1, 2023 only under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after the calendar quarter ending on September 30, 2016, if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period, or the measurement period, in which the trading price (as defined in the Indenture) per \$1,000 principal amount of convertible notes for each trading

## TABLE OF CONTENTS

day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day; (3) if we call any or all of the convertible notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events. On or after January 1, 2023 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their convertible notes at any time, regardless of the foregoing circumstances. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock (and cash in lieu of any fractional shares) or a combination of cash and shares of our common stock, at our election. The conversion rate will initially be 5.0358 shares of our common stock per \$1,000 principal amount of convertible notes (equivalent to an initial conversion price of approximately \$198.58 per share of common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its convertible notes in connection with such a corporate event in certain circumstances.

We may not redeem the convertible notes prior to July 6, 2021. We may redeem for cash all or any portion of the convertible notes, at our option, on or after July 6, 2021, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the convertible notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. No sinking fund is provided for the convertible notes.

If we undergo a fundamental change, holders may require us to repurchase for cash all or any portion of their convertible notes at a fundamental change repurchase price equal to 100% of the principal amount of the convertible notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The convertible notes are our senior unsecured obligations and rank senior in right of payment to our future indebtedness that is expressly subordinated in right of payment to the convertible notes; equal in right of payment to our future unsecured indebtedness that is not so subordinated; effectively junior in right of payment to our future secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally subordinated to all existing and future indebtedness and other liabilities (including trade payables) incurred by our subsidiaries.

The Indenture contains customary events of default with respect to the convertible notes, including that upon certain events of default occurring and continuing, the trustee by notice to us, or the holders of at least 25% in principal amount of the outstanding convertible notes by notice to us, may (subject to the provisions of the Indenture) declare 100% of the principal of and accrued and unpaid interest, if any, on all the convertible notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization involving us or a significant subsidiary, 100% of the principal of and accrued and unpaid interest on the convertible notes will automatically become due and payable. Upon such a declaration of acceleration, such principal and accrued and unpaid interest, if any, will be due and payable immediately.

In connection with the pricing of the convertible notes, we entered into privately-negotiated capped call transactions with Royal Bank of Canada, or RBC, UBS AG, London Branch, or UBS, and Credit Suisse Capital LLC, or Credit Suisse. The aggregate cost of the capped call transactions entered into in connection with the pricing of the notes was approximately \$33.4 million. We and RBC, UBS and Credit Suisse entered into additional capped call transactions in connection with the underwriters' exercise of their over-allotment option in full at an aggregate cost of approximately \$5.0 million. The capped call transactions are generally expected to reduce the potential dilution upon conversion of the convertible notes in the event that the market price per share of our common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the convertible notes, and is subject to anti-dilution adjustments generally similar to those applicable to the conversion rate of the convertible notes. The cap price of the capped call transactions will initially be \$262.27

## TABLE OF CONTENTS

per share, and is subject to certain adjustments under the terms of the capped call transactions. If, however, the market price per share of our common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution upon conversion of the convertible notes to the extent that such market price exceeds the cap price of the capped call transactions.

### **Income Taxes**

No income tax expense or benefit was recognized in the accompanying consolidated financial statements. Our deferred tax assets are comprised primarily of net operating loss carryforwards. We maintain a full valuation allowance on our deferred tax assets since we have not yet achieved sustained profitable operations. As a result, we have not recorded any income tax benefit since our inception.

### **Contractual Obligations and Commitments**

Our long-term contractual obligations include commitments and estimated purchase obligations entered into in the normal course of business. The following table summarizes our significant contractual obligations and commercial commitments as of December 31, 2016 and the effects such obligations are expected to have on our liquidity and cash flows in future periods:

	Payments Due By Period				
	Total	Less than 1 year	1 – 3 years	4 – 5 years	More than 5 years
			(in thousands)		
Operating leases	\$ 169,886	\$ 9,191	\$ 25,542	\$ 28,077	\$ 107,076
Long-term debt	460,000	—	—	—	460,000
Purchase obligations	11,877	11,767	89	12	9
Total	<u>\$ 641,763</u>	<u>\$ 20,958</u>	<u>\$ 25,631</u>	<u>\$ 28,089</u>	<u>\$ 567,085</u>

See Item 2. “Properties” to this Annual Report on Form 10-K for a description of our operating leases. In addition to the general description of our operating leases, the following provides additional details related to our leases for the Hudson Yards development.

In December 2016, we entered into lease agreements relating to our new global corporate headquarters in the Hudson Yards development site in New York, New York. The leases will provide us with shorter term office space in 10 Hudson Yards, or the 10 Building, and longer term office space in 55 Hudson Yards, or the 55 Building.

The lease for the 10 Building will initially provide us with approximately 49,000 square feet of space consisting of the entire 37<sup>th</sup> floor and a portion of the 40<sup>th</sup> floor of the 10 Building, or the 10 Lease. The lease for the 37<sup>th</sup> floor premises expires in June 2021.

The lease for the 40<sup>th</sup> floor expires on the earlier to occur of (a) the date that is 285 days after the possession date under the 55 Lease (as defined below), which may be extended pursuant to the terms of the 55 Lease; (b) the date that we legally occupy the premises in the 55 Building (as defined below); and (c) June 30, 2021. We refer to this date as the 40<sup>th</sup> Floor Expiration Date. The 10 Lease contains customary default provisions, including, without limitation, those relating to payment defaults, performance defaults, events of bankruptcy and customary indemnification provisions. The 10 Lease provides for annual fixed rental payments of approximately (i) \$5.2 million per year for the period commencing in April 2017 and ending on the day immediately preceding the 40<sup>th</sup> Floor Expiration Date and (ii) \$3.5 million per year commencing on the 40<sup>th</sup> Floor Expiration Date and ending on June 30, 2021. In addition to the fixed rent obligations, we are obligated to pay our percentage share for customary escalations for operating expenses attributable to the 10 Building and the Hudson Yards development, taxes and tax-related payments. As security for the 10 Lease, we provided the landlord with a letter of credit in the amount of approximately \$3.5 million.

The lease for the 55 Building will provide us with approximately 85,000 square feet of space consisting of the 23<sup>rd</sup> through 25<sup>th</sup> floors of the 55 Building, or the 55 Lease. The 55 Lease will expire on the last day of the calendar month in which the 15<sup>th</sup> anniversary of the day preceding the Rent Commencement Date (as defined below) falls. Under the 55 Lease, we have an option to renew the term of the 55 Lease either for (i) two additional terms of five years each or (ii) one additional ten-year term. In addition, the 55 Lease

## TABLE OF CONTENTS

contains customary default provisions, including, without limitation, those relating to payment defaults under the 55 Lease, performance defaults under the 55 Lease, events of bankruptcy and customary indemnification provisions. The 55 Lease provides for annual fixed rental payments of approximately (i) \$7.9 million per year for the period commencing on the date that is 12 months after the Company takes possession of its premises in the 55 Building, or the Rent Commencement Date, and ending on the day immediately preceding the 5<sup>th</sup> anniversary of the Rent Commencement Date; (ii) \$8.7 million per year for the period commencing on 5<sup>th</sup> anniversary of the Rent Commencement Date and ending on the day immediately preceding the 10<sup>th</sup> anniversary of the Rent Commencement Date; and (iii) \$9.6 million per year for the period commencing on 10<sup>th</sup> anniversary of the Rent Commencement Date and ending upon the expiration date of the 55 Lease. In addition to the fixed rent obligations, we are obligated to pay (x) certain incremental construction costs incurred by the landlord on behalf of us and (y) our percentage share for customary escalations for operating expenses attributable to the 55 Building and the Hudson Yards development, taxes and tax-related payments. As security for the 55 Lease, we provided the landlord with a letter of credit in the amount of approximately \$8.7 million, which will be subject to periodic reduction under the terms of the 55 Lease.

See “— Critical Accounting Policies and Estimates — Convertible Senior Notes and Capped Call Transactions” above for a description of our convertible notes.

We are a party to license and research and development agreements with universities and other third parties, as well as patent assignment agreements, under which we have obtained rights to patents, patent applications and know-how. We enter into contracts in the normal course of business with contract research organizations, or CROs, for clinical trials, clinical and commercial supply manufacturing, with vendors for commercial and precommercial activities, research and development activities and other services and products for operating purposes. Our agreements generally provide for termination within 90 days of notice. Such agreements are cancelable contracts and not included in the table of contractual obligations and commitments. We have included as purchase obligations our commitments under agreements to the extent they are quantifiable and are not cancelable.

Under our agreement with Sumitomo Dainippon, we are required to use our commercially reasonable efforts to develop OCA outside of the territories in which Sumitomo Dainippon has a license under the agreement. As these amounts are not quantifiable, they are not included in the table above.

### **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 Securities and Exchange Commission rules.

### **Recent Accounting Pronouncements**

See note 3 to the consolidated financial statements for a full description of recent accounting pronouncements including the respective expected dates of adoption and expected effects on results of operations and financial condition.

### **Basic and Diluted Net Loss Attributable to Common Stockholders per Share of Common Stock**

Our Series A, B and C preferred stock represented participating securities. However, since we have operated at a loss since inception, and losses are not allocated to the preferred stock, the two class method did not affect our calculation of earnings per share. Upon the closing of our initial public offering, all outstanding shares of our preferred stock were converted into an aggregate of 7,403,817 shares of common stock.

Dilutive common stock equivalents would include the dilutive effect of convertible securities, common stock options, RSUs, RSAs and warrants to purchase common stock. Potentially dilutive common stock equivalents totaled approximately 1.9 million shares, 1.5 million shares, and 1.5 million shares for the years ended December 31, 2016, 2015 and 2014, respectively. Potentially dilutive common stock equivalents were excluded from the diluted earnings per share denominator for all periods because of their anti-dilutive effect. Therefore, the weighted average shares used to calculate both basic and diluted earnings per share are the same.

## [TABLE OF CONTENTS](#)

### **Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents and investment securities, we do not believe that an increase in market rates would have any significant impact on the realized value of our investment securities. If a 10% change in interest rates were to have occurred on December 31, 2016, this change would not have had a material effect on the fair value of our investment portfolio as of that date.

We do not believe that our cash and cash equivalents and available for sale investments have significant risk of default or illiquidity. While we believe our cash, cash equivalents and available for sale investments do not contain excessive risk, we cannot provide absolute assurance that in the future our investments will not be subject to adverse changes in market value. In addition, we maintain significant amounts of cash and cash equivalents at one or more financial institutions that are in excess of federally insured limits.

We contract with CROs, investigational sites, suppliers, facilities, marketing firms and other vendors and suppliers in Europe and internationally. We are therefore subject to fluctuations in foreign currency rates in connection with these agreements. We do not hedge our foreign currency exchange rate risk.

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We do not believe that inflation has had a material effect on our results of operations during 2016, 2015 or 2014.

### **Item 8. Financial Statements and Supplementary Data**

The financial statements required to be filed pursuant to this Item 8 are appended to this Annual Report on Form 10-K. An index of those financial statements is found in Item 15.

### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

Our principal executive officer and principal financial officer evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2016. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act means controls and other procedures of a company that are designed to ensure that information required to be disclosed by 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 Securities and Exchange Commission’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, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2016, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were adequate and effective.

#### **Management’s Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for our company. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, the company’s principal executive and principal financial officers and effected by the company’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and

## TABLE OF CONTENTS

includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of our company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our company's assets that could have a material effect on the financial statements.

Internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements prepared for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, with the participation of our principal executive officer and principal financial officer, assessed the effectiveness of our internal control over financial reporting as of December 31, 2016. In making this assessment, our management used the criteria set forth in the *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2016 based on those criteria.

### **Attestation Report of Independent Registered Public Accounting Firm**

The effectiveness of our internal control over financial reporting as of December 31, 2016 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included in this Annual Report on Form 10-K.

### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act), identified in connection with the evaluation of such internal control, that occurred during the three months ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

As a result of our initial commercialization in the quarter ended June 30, 2016, we implemented processes and internal controls to record product revenues, deferred revenues, cost of sales and inventory. The implementation of these processes resulted in changes to our internal controls over financial reporting, which we believe were material. Further, we plan to continue to evaluate and enhance the design and documentation of our internal control over financial reporting process related to the recording of product revenues, cost of sales and inventory to maintain effective controls over our financial reporting.

### **Item 9B. Other Information**

Not applicable.

[TABLE OF CONTENTS](#)

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

Pursuant to Paragraph G(3) of the General Instructions to Form 10-K, the information required by Part III (Items 10, 11, 12, 13, and 14) is being incorporated by reference herein to our definitive proxy statement to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2016 in conjunction with our 2017 Annual Meeting of Stockholders.

**Item 11. Executive Compensation**

See Item 10.

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

See Item 10.

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

See Item 10.

**Item 14. Principal Accounting Fees and Services**

See Item 10.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements:

<a href="#">Reports of Independent Registered Public Accounting Firm</a>	<a href="#">F-2</a>
<a href="#">Consolidated Balance Sheets</a>	<a href="#">F-4</a>
<a href="#">Consolidated Statements of Operations</a>	<a href="#">F-5</a>
<a href="#">Consolidated Statement of Comprehensive Loss</a>	<a href="#">F-6</a>
<a href="#">Consolidated Statements of Changes in Stockholders' Equity (Deficit)</a>	<a href="#">F-7</a>
<a href="#">Consolidated Statements of Cash Flows</a>	<a href="#">F-8</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">F-9</a>

(2) Financial Statement Schedules:

All financial statement schedules have been omitted because they are not applicable, not required or the information required is shown in the financial statements or the notes thereto.

(3) Exhibits. The exhibits filed as part of this Annual Report on Form 10-K are set forth on the Exhibit Index immediately following our consolidated financial statements. The Exhibit Index is incorporated herein by reference.

**Item 16. Form 10-K Summary**

None.

[TABLE OF CONTENTS](#)

**SIGNATURES**

Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

**INTERCEPT PHARMACEUTICALS, INC.**

Date: March 1, 2017

By: /s/ Mark Pruzanski, M.D.

Mark Pruzanski  
President and Chief Executive Officer  
(Principal Executive Officer)

Date: March 1, 2017

By: /s/ Sandip Kapadia

Sandip Kapadia  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed by the following persons in the capacities indicated below and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Mark Pruzanski, M.D.</u> Mark Pruzanski, M.D.	President, Chief Executive Officer and Director (Principal Executive Officer)	March 1, 2017
<u>/s/ Sandip Kapadia</u> Sandip Kapadia	Chief Financial Officer (Principal Financial and Accounting Officer)	March 1, 2017
<u>/s/ Paolo Fundaro</u> Paolo Fundaro	Chairman of the Board of Directors	March 1, 2017
<u>/s/ Srinivas Akkaraju, M.D., Ph.D.</u> Srinivas Akkaraju, M.D., Ph.D.	Director	March 1, 2017
<u>/s/ Luca Benatti, Ph.D.</u> Luca Benatti, Ph.D.	Director	March 1, 2017
<u>/s/ Daniel Bradbury</u> Daniel Bradbury	Director	March 1, 2017
<u>/s/ Keith Gottesdiener, M.D.</u> Keith Gottesdiener, M.D.	Director	March 1, 2017
<u>/s/ Gino Santini</u> Gino Santini	Director	March 1, 2017
<u>/s/ Glenn Sblendorio</u> Glenn Sblendorio	Director	March 1, 2017
<u>/s/ Daniel Welch</u> Daniel Welch	Director	March 1, 2017

[TABLE OF CONTENTS](#)

**INTERCEPT PHARMACEUTICALS, INC.**

**Index to Consolidated Financial Statements**

<a href="#">Reports of Independent Registered Public Accounting Firm</a>	<a href="#">F-2</a>
Consolidated Financial Statements:	
<a href="#">Consolidated Balance Sheets as of December 31, 2016 and 2015</a>	<a href="#">F-4</a>
<a href="#">Consolidated Statements of Operations for the Years Ended December 31, 2016, 2015 and 2014</a>	<a href="#">F-5</a>
<a href="#">Consolidated Statement of Comprehensive Loss for the Years Ended December 31, 2016, 2015 and 2014</a>	<a href="#">F-6</a>
<a href="#">Consolidated Statements of Changes in Stockholders' Equity for the Years Ended December 31, 2016, 2015 and 2014</a>	<a href="#">F-7</a>
<a href="#">Consolidated Statements of Cash Flows for the Years Ended December 31, 2016, 2015 and 2014</a>	<a href="#">F-8</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">F-9</a>

[TABLE OF CONTENTS](#)

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Intercept Pharmaceuticals, Inc.:

We have audited the accompanying consolidated balance sheets of Intercept Pharmaceuticals, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2016. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Intercept Pharmaceuticals, Inc. and subsidiaries as of December 31, 2016 and 2015, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2016, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Intercept Pharmaceuticals, Inc.'s internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 1, 2017 expressed an unqualified opinion on the effectiveness of Intercept Pharmaceuticals, Inc.'s internal control over financial reporting.

/s/ KPMG LLP

New York, New York  
March 1, 2017

[TABLE OF CONTENTS](#)

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Intercept Pharmaceuticals, Inc.:

We have audited Intercept Pharmaceuticals, Inc. and subsidiaries' internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Intercept Pharmaceuticals, Inc. and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Intercept Pharmaceuticals, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Intercept Pharmaceuticals, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2016 and our report dated March 1, 2017 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

New York, New York  
March 1, 2017

[TABLE OF CONTENTS](#)

## INTERCEPT PHARMACEUTICALS, INC.

## Consolidated Balance Sheets

	December 31,	
	2016	2015
	(in thousands)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 43,675	\$ 32,742
Investment securities, available-for-sale	645,710	595,313
Accounts receivable	9,126	—
Prepaid expenses and other current assets	9,354	13,638
Total current assets	707,865	641,693
Fixed assets, net	11,295	10,047
Inventory	2,279	—
Security deposits	17,814	4,018
Total assets	<u>\$ 739,253</u>	<u>\$ 655,758</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable, accrued expenses and other liabilities	\$ 65,551	\$ 45,591
Short-term interest payable	7,267	—
Short-term portion of deferred revenue	5,694	1,782
Total current liabilities	78,512	47,373
Long-term liabilities:		
Long-term debt	341,356	—
Long-term portion of deferred revenue	4,453	6,236
Total liabilities	<u>\$ 424,321</u>	<u>\$ 53,609</u>
Stockholders' equity:		
Common stock par value \$0.001 per share; 45,000,000 and 35,000,000 shares authorized; 24,819,918 and 24,391,430 shares issued and outstanding as of December 31, 2016 and December 31, 2015, respectively	25	24
Additional paid-in capital	1,426,168	1,300,008
Accumulated other comprehensive loss, net	(2,801)	(2,253)
Accumulated deficit	(1,108,460)	(695,630)
Total stockholders' equity	314,932	602,149
Total liabilities and stockholders' equity	<u>\$ 739,253</u>	<u>\$ 655,758</u>

See accompanying notes to consolidated financial statements.

## INTERCEPT PHARMACEUTICALS, INC.

## Consolidated Statements of Operations

	Years Ended December 31,		
	2016	2015	2014
	(in thousands, except per share data)		
Revenue:			
Product revenue, net	\$ 18,169	\$ —	\$ —
Licensing revenue	6,782	2,782	1,742
Total revenue	<u>24,951</u>	<u>2,782</u>	<u>1,742</u>
Operating expenses:			
Selling, general and administrative	273,596	119,242	34,601
Research and development	153,893	112,696	80,311
Total operating expenses	<u>427,489</u>	<u>231,938</u>	<u>114,912</u>
Operating loss	<u>(402,538)</u>	<u>(229,156)</u>	<u>(113,170)</u>
Other income (expense):			
Interest expense	(14,196)	—	—
Revaluation of warrants	—	—	(170,832)
Other income, net	3,904	2,727	776
Total other income (expense)	<u>(10,292)</u>	<u>2,727</u>	<u>(170,056)</u>
Net loss	<u>\$(412,830)</u>	<u>\$(226,429)</u>	<u>\$(283,226)</u>
Net loss per common and potential common share:			
Basic and diluted	\$ (16.74)	\$ (9.56)	\$ (13.63)
Weighted average common and potential common shares outstanding:			
Basic and diluted	24,663	23,694	20,784

See accompanying notes to consolidated financial statements.

[TABLE OF CONTENTS](#)

## INTERCEPT PHARMACEUTICALS, INC.

## Consolidated Statements of Comprehensive Loss

	Years Ended December 31,		
	2016	2015	2014
Net loss	\$ (412,830)	\$(226,429)	\$(283,226)
Other comprehensive loss:			
Unrealized gains (losses) on securities:			
Unrealized holding gains (losses) arising during the period	378	(1,628)	(369)
Reclassification for recognized gains (losses) on marketable investment securities during the period recognized in other income, net	(48)	3	25
Net unrealized gains (losses) on marketable investment securities	\$ 330	\$ (1,625)	\$ (344)
Foreign currency translation adjustments	(878)	(347)	—
Comprehensive loss	<u>\$ (413,378)</u>	<u>\$(228,401)</u>	<u>\$(283,570)</u>

See accompanying notes to consolidated financial statements.

INTERCEPT PHARMACEUTICALS, INC.

**Consolidated Statements of Changes in Stockholders' Equity**  
**For the Years Ended December 31, 2016, 2015, and 2014**  
(in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Stockholders' Equity (Deficit)
	Shares	Amount				
Balance – December 31, 2013	19,390	\$ 19	\$ 268,303	\$ (185,975)	\$ 60	\$ 82,407
Stock-based compensation	—	—	20,127	—	—	20,127
Issuance of common stock from public offering, net of underwriting fees and issuance costs	600	1	183,475	—	—	183,476
Warrants converted to common stock	835	1	220,943	—	—	220,944
Net proceeds from exercise of stock options	591	1	7,507	—	—	7,508
Other comprehensive income	—	—	—	—	(341)	(341)
Net loss	—	—	—	(283,226)	—	(283,226)
Balance – December 31, 2014	21,416	\$ 22	\$ 700,355	\$ (469,201)	\$ (281)	\$ 230,895
Stock-based compensation	—	—	34,189	—	—	34,189
Issuance of common stock from public offering, net of underwriting fees and issuance costs	2,481	1	558,753	—	—	558,754
Net proceeds from exercise of stock options	495	1	6,711	—	—	6,712
Other comprehensive income	—	—	—	—	(1,972)	(1,972)
Net loss	—	—	—	(226,429)	—	(226,429)
Balance – December 31, 2015	24,392	\$ 24	\$ 1,300,008	\$ (695,630)	\$ (2,253)	\$ 602,149
Stock-based compensation	—	—	46,205	—	—	46,205
Recognition of debt discount on convertible notes	—	—	113,145	—	—	113,145
Purchase of capped call transactions and associated costs	—	—	(38,364)	—	—	(38,364)
Net proceeds from exercise of stock options	428	1	5,174	—	—	5,175
Other comprehensive income	—	—	—	—	(548)	(548)
Net loss	—	—	—	(412,830)	—	(412,830)
Balance – December 31, 2016	<u>24,820</u>	<u>\$ 25</u>	<u>\$ 1,426,168</u>	<u>\$ (1,108,460)</u>	<u>\$ (2,801)</u>	<u>\$ 314,932</u>

See accompanying notes to consolidated financial statements.

[TABLE OF CONTENTS](#)

INTERCEPT PHARMACEUTICALS, INC.

Consolidated Statements of Cash Flows

	Years Ended December 31,		
	2016	2015	2014
	(in thousands)		
Cash flows from operating activities:			
Net loss	\$(412,830)	\$(226,429)	\$(283,226)
Adjustments to reconcile net loss to net cash used in operating activities:			
Revaluation of warrants	—	—	170,832
Share-based compensation	46,205	34,189	20,127
Amortization of investment premium	4,939	6,302	3,366
Amortization of deferred financing costs	685	—	—
Realized loss on investments	48	—	—
Depreciation	3,831	1,691	443
Loss on the disposal of property and equipment	—	—	20
Accretion of debt discount	6,242	—	—
Changes in operating assets:			
Prepaid expenses and other current assets	4,284	(7,516)	(3,371)
Security deposits	(13,796)	(1,575)	(1,388)
Accounts receivable	(9,126)	—	—
Inventory	(2,279)	—	—
Changes in operating liabilities:			
Accounts payable, accrued expenses and other current liabilities	19,960	32,218	6,200
Interest payable	7,267	—	—
Deferred revenue	2,129	(1,782)	(741)
Net cash used in operating activities	<u>(342,441)</u>	<u>(162,902)</u>	<u>(87,738)</u>
Cash flows from investing activities:			
Purchases of investment securities	(511,521)	(640,709)	(204,344)
Sales of investment securities	456,465	257,172	112,402
Purchases of equipment, leasehold improvements, and furniture and fixtures	(5,079)	(5,935)	(4,643)
Net cash used in investing activities	<u>(60,135)</u>	<u>(389,472)</u>	<u>(96,585)</u>
Cash flows from financing activities:			
Proceeds from issuance of stock offerings, net of issuance costs	—	558,756	183,475
Payments for capped call transactions and associated costs	(38,364)	—	—
Proceeds from issuance of Convertible Notes, net of issuance costs	447,573	—	—
Proceeds from exercise of options	5,173	6,713	7,508
Net cash provided by financing activities	<u>414,382</u>	<u>565,469</u>	<u>190,983</u>
Effect of exchange rate changes	<u>(873)</u>	<u>(376)</u>	<u>—</u>
Net increase in cash and cash equivalents	10,933	12,719	6,660
Cash and cash equivalents – beginning of period	32,742	20,023	13,363
Cash and cash equivalents – end of period	<u>\$ 43,675</u>	<u>\$ 32,742</u>	<u>\$ 20,023</u>
Supplemental disclosures of non-cash activities:			
Issuance of common stock for cashless warrant exchange	\$ —	\$ —	\$ 220,944

See accompanying notes to consolidated financial statements.

**INTERCEPT PHARMACEUTICALS, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Overview of Business**

Intercept Pharmaceuticals, Inc. (“Intercept” or the “Company”) is a biopharmaceutical company focused on the development and commercialization of novel therapeutics to treat non-viral, progressive liver diseases, including primary biliary cholangitis (“PBC”), nonalcoholic steatohepatitis (“NASH”), primary sclerosing cholangitis (“PSC”) and biliary atresia. Founded in 2002 in New York, Intercept now has operations in the United States, Europe and Canada.

**2. Basis of Presentation**

The Company’s financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“U.S. GAAP”). The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Certain reclassifications have been made to prior period amounts in our consolidated statements of operations to conform to the current period presentation. The Company reclassified certain medical affairs costs of \$15.5 million from research and development expense to selling, general and administrative expense on the consolidated statements operations during the year ended December 31, 2015.

**3. Summary of Significant Accounting Policies**

*Principles of Consolidation*

The consolidated financial statements include the accounts of Intercept and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The Company has no unconsolidated subsidiaries or investments accounted for under the equity method.

*Cash and Cash Equivalents*

The Company considers all highly liquid securities with a maturity of three months or less at acquisition to be cash equivalents.

*Investment Securities, Available for Sale*

Investment securities are considered to be available-for-sale and are carried at fair value. Unrealized gains and losses, if any, are reported in other comprehensive income (loss). The cost of investment securities classified as available-for-sale is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and accretion are included in interest income. Realized gains and losses, and declines in value judged to be other-than-temporary, if any, are also included in other income, net. The cost of securities sold is based on the specific identification method. The estimated fair value of the available for sale securities is determined based on quoted market prices or rates for similar instruments.

*Fair Value of Financial Instruments*

Financial instruments, including cash and cash equivalents, receivables, accounts payable and accrued liabilities are carried at cost which management believes approximates fair value because of the short term maturity of these instruments.

*Risks and Uncertainties*

The Company is subject to risks common to companies in the pharmaceutical industry including failing to secure additional funding, uncertainties related to commercialization of products, and regulatory approval.

*Concentration of Credit Risk*

Financial instruments, which potentially subject the Company to concentrations of credit risk, principally consist of cash, cash equivalents and investment securities. The Company currently invests its excess cash

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

primarily in money market funds, U.S. Treasury notes, and high quality, marketable debt instruments of corporations, financial institutions and government sponsored enterprises. The Company has adopted an investment policy that includes guidelines relative to credit quality, diversification and maturities to preserve principal and liquidity. On a consolidated basis, for the year ended December 31, 2016, the Company's three largest customers (as discussed in more detail below under "Revenue Recognition") accounted for 49%, 37% and 12%, of the Company's gross sales, respectively.

***Accounts Receivable***

The Company extends credit to customers based on its evaluation of the customer's financial condition. The Company records receivables for all billings when amounts are due under standard terms. Accounts receivable are stated at amounts due net of applicable prompt pay discounts and other contractual adjustments as well as an allowance for doubtful accounts. The Company assesses the need for an allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due, the customer's ability to pay its obligation and the condition of the general economy and the industry as a whole. The Company will write off accounts receivable when the Company determines that they are uncollectible. The Company has recorded \$9.1 million of accounts receivable as of December 31, 2016 and has not recorded an allowance for any doubtful accounts as of December 31, 2016. On a consolidated basis, the Company's three largest customers accounted for 45%, 38% and 14% of the December 31, 2016 accounts receivable balance, respectively.

***Fixed Assets***

Fixed assets are stated at cost, and depreciated over the estimated useful life of the assets. Depreciation is recorded using the straight-line method over the estimated useful lives of the respective assets, generally three to seven years. Leasehold improvements are amortized over the shorter of the asset's useful life or the life of the lease term. Expenditures for maintenance and repairs are charged to expense as incurred.

***Impairment of Long-Lived Assets***

Long-lived assets consist of fixed assets. The Company evaluates long-lived assets for impairment when events and circumstances indicate that the carrying amount of an asset or group of assets may not be fully recoverable.

***Inventory***

Inventories are stated at the lower of cost or estimated realizable value. The Company determines the cost of inventory using the first-in, first-out, or FIFO, method. The Company capitalizes inventory costs associated with the Company's product after regulatory approval when, based on management's judgment, future commercialization is considered probable and the future economic benefit is expected to be realized; otherwise, such costs are expensed as research and development. The Company periodically analyzes its inventory levels to identify inventory that may expire prior to expected sale or has a cost basis in excess of its estimated realizable value, and writes-down such inventories as appropriate. In addition, the Company's product is subject to strict quality control and monitoring which the Company performs throughout the manufacturing process. If certain batches or units of product no longer meet quality specifications or become obsolete due to expiration, the Company records a charge to cost of sales sold to write down such unmarketable inventory to zero.

***Convertible Senior Notes***

The Company's 3.25% convertible senior notes due 2023 (the "Convertible Notes") are accounted for in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 470, formerly FSP APB 14-1, Accounting for Convertible Debt Instruments That May be Settled in Cash upon Conversion (Including Partial Cash Settlement). ASC Subtopic 470-20 requires the issuer of

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

convertible debt that may be settled in shares or cash upon conversion at the issuer's option, such as these notes, to account for the liability (debt) and equity (conversion option) components separately. The value assigned to the debt component is the estimated fair value, as of the issuance date, of a similar debt instrument without the conversion option. The amount of the equity component (and resulting debt discount) is calculated by deducting the fair value of the liability component from the principal amount of the convertible debt instrument. The resulting debt discount is amortized as additional non-cash interest expense over the expected life of the notes utilizing the effective interest method. Although ASC 470 has no impact on the Company's actual past or future cash flows, it requires the Company to record non-cash interest expense as the debt discount is amortized. For additional information, see Note 10 — Long-Term Debt.

***Revenue Recognition***

*Product Revenue, Net*

Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence that an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. When the revenue recognition criteria are not met, we defer the recognition of revenue by recording deferred revenue on the balance sheet until such time that all criteria are met.

Beginning in June 2016, subsequent to the U.S. Food and Drug Administration ("FDA") approval of Ocaliva® (obeticholic acid or "OCA") for the treatment of PBC, the Company sells Ocaliva in the United States principally to a limited number of specialty pharmacies which dispense the product directly to patients. The specialty pharmacies are referred to as the Company's customers.

The Company provides the right of return to its customers for unopened product for a limited time before and after its expiration date. Given the Company's limited sales history for Ocaliva and the inherent uncertainties in estimating product returns, the Company has determined that the shipments of Ocaliva made to its customers thus far do not meet the criteria for revenue recognition at the time of shipment. Accordingly, the Company recognizes revenue when the product is sold through by its customers, provided all other revenue recognition criteria are met. The Company invoices its customers upon shipment of Ocaliva to them and records accounts receivable, with a corresponding liability for deferred revenue equal to the gross invoice price. The Company then recognizes revenue when Ocaliva is sold through as specialty pharmacies dispense product directly to the patients.

The Company recognized net sales of Ocaliva of \$18.2 million for the year ended December 31, 2016. The Company also recorded \$3.9 million in deferred revenues recorded in short-term portion of deferred revenue on its balance sheet, which represents product shipped to distributors, but not sold through as of December 31, 2016.

The Company has written contracts with each of its customers and delivery occurs when the customer receives Ocaliva. The Company evaluates the creditworthiness of each of its customers to determine whether collection is reasonably assured. In order to conclude that the price is fixed and determinable, the Company must be able to (i) calculate its gross product revenues from the sales to its customers and (ii) reasonably estimate its net product revenues. The Company calculates gross product revenues based on the wholesale acquisition cost that the Company charges its customers for Ocaliva. The Company estimates its net product revenues by deducting from its gross product revenues (i) trade allowances, such as invoice discounts for prompt payment and customer fees, (ii) estimated government rebates and discounts related to Medicare, Medicaid and other government programs, and (iii) estimated costs of incentives offered to certain indirect customers including patients.

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

*Trade Allowances*

The Company provides invoice discounts on Ocaliva sales to certain of its customers for prompt payment and records these discounts as a reduction to gross product revenues. These discounts are based on contractual terms.

*Rebates and Discounts*

The Company contracts with Centers for Medicare & Medicaid Services (“CMS”) and other government agencies to make Ocaliva available to eligible patients. As a result, the Company estimates any rebates and discounts and deducts these estimated amounts from its gross product revenues at the time the revenues are recognized. The Company’s estimates of rebates and discounts are based on the government mandated discounts, which are statutorily-defined and applicable to these government funded programs. These estimates are recorded in accrued liabilities on the condensed consolidated balance sheet.

*Other Incentives*

Other incentives that the Company offers to indirect customers include co-pay assistance cards provided by the Company for PBC patients whom reside in states that permit co-pay assistance programs. The Company’s co-pay assistance program is intended to reduce each participating patient’s portion of the financial responsibility for Ocaliva purchase price to a specified dollar amount. The Company estimates each period the amount of co-pay assistance provided to eligible patients based on the terms of the program when product is dispensed by the specialty pharmacies to the patients. These estimates are based on redemption information provided by third party claims processing organizations and are recorded in accrued liabilities on the condensed consolidated balance sheet.

*Licensing Revenue*

The Company accounts for the development, regulatory and sales milestones within an arrangement in accordance with the milestone method of revenue recognition. This method allows for the recognition of consideration which is contingent on the achievement of a substantive milestone in its entirety in the period the milestone is achieved. Each future milestone is considered substantive if it (i) relates solely to the past performance of the intellectual property to achieve the milestone; (ii) is reasonable relative to all of the deliverables and payment terms in the arrangement; and (iii) is commensurate with either the Company’s performance or the enhanced value of the intellectual property as a result of a specific outcome resulting from the Company’s performance.

***Research and Development Expenses***

Research and development costs that do not have alternative future use are charged to expense as incurred. This includes the cost of conducting clinical trials, compensation and related overhead for employees and consultants involved in research and development and the cost of the Company’s manufacturing activities to supply ongoing and future clinical trials and preclinical studies as well as preparations for commercialization of obeticholic acid (“OCA”). For periods prior to the commercial launch of Ocaliva in PBC in June 2016, the manufacturing costs for OCA were expensed as part of research and development. The Company will continue to incur manufacturing costs for commercial supply of OCA in other indications such as NASH prior to their approval.

***Stock-based Compensation***

The Company accounts for stock-based compensation in accordance with Financial Accounting Standards Board’s Accounting Standards Codification (“ASC”) 718, “Compensation — Stock Compensation” (ASC 718). The Company estimates the fair value of stock options using the Black-Scholes option pricing model on the date of the grant. Restricted stock units and restricted stock awards are valued based on the closing price of the Company’s common stock on the date of the grant. The fair value of equity instruments

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

expected to vest after taking into consideration an estimate of award forfeitures based on actual experience are recognized and amortized on a straight-line basis over the requisite service period of the award. Generally stock options fully vest four years from the grant date and have a term of ten years. The Company recognizes stock-based compensation for consultants on a mark — to-market basis which is updated on a quarterly basis.

***Warrants to Purchase Common Stock***

In conjunction with various financing transactions, the Company issued warrants to purchase the Company's common stock. Certain of the warrants included a so-called "down round" provision that provided for a reduction in the warrant exercise price if there were subsequent issuances of additional shares of common stock for consideration per share less than the per share warrant exercise prices and certain warrants contained a provision that required the underlying shares to be registered upon an initial public offering ("IPO"). These warrants were deemed to be derivative instruments and as such, were recorded as a liability and were marked-to-market at each reporting period using the Black-Scholes option pricing model. The Company estimated the fair values of the warrants at each reporting period using a Black-Scholes option-pricing. Management concluded, under the Company's facts and circumstances, that the estimated fair values of the warrants using the Black-Scholes option-pricing model approximates, in all material respects, the values determined using a binomial valuation model. The estimates in the Black-Scholes option-pricing model and the binomial valuation model are based, in part, on subjective assumptions, including but not limited to stock price volatility, the expected life of the warrants, the risk free interest rate and the fair value of the common stock underlying the warrants. Changes in the fair value of the common stock warrant liability from the prior period were recorded as a component of other income and expense.

***Net Income (Loss) Per Share***

Basic net income (loss) per share is computed by dividing net income (loss) attributable to common stockholders (numerator) by the weighted average number of common shares outstanding (denominator) during the period. Diluted net income (loss) per share gives effect to all dilutive potential common shares outstanding during the period including stock options, restricted stock units ("RSUs") and warrants using the treasury stock method.

***Income Taxes***

The Company utilizes the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and tax bases of assets and liabilities using enacted tax rates in effect for years in which the temporary differences are expected to reverse. The Company establishes a valuation allowance when it believes it is more likely than not that deferred tax assets will not be realized.

The Company determines the need for a valuation allowance by assessing the probability of realizing deferred tax assets, taking into consideration all available positive and negative evidence, including historical operating results, expectations of future taxable income, carryforward periods available, various income tax strategies and other relevant factors. Significant judgment is required in making this assessment and to the extent future expectations change, the Company would have to assess the recoverability of its deferred assets at that time. At December 31, 2016 and 2015, the Company maintained a full valuation allowance on its deferred tax assets.

At any one time the Company's tax returns for numerous tax years are subject to examination by U.S. Federal, state, and foreign taxing jurisdictions. The impact of an uncertain tax position taken or expected to be taken on an income tax return must be recognized in the financial statements at the largest amount that is more likely than not to be sustained. An uncertain income tax position will not be recognized in the financial statements unless it is more likely than not to be sustained. At December 31, 2016 and 2015, the Company had no reserves for unrecognized tax benefits.

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

***Segments***

The Company operates in one segment. The Company is a biopharmaceutical company focused on discovering, developing and commercializing treatments for non-viral, progressive liver diseases.

***Recent Accounting Pronouncements***

In November 2015, the FASB issued Accounting Standards update (“ASU”) 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes, which requires that deferred tax assets and liabilities, as well as any related valuation allowance, be classified as noncurrent on the balance sheet rather than being separated into current and noncurrent. The ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016. Early adoption is permitted and may be applied either retrospectively or on a prospective basis. The Company has early adopted this ASU effective with its annual reporting period ended December 31, 2016 on a prospective basis. The adoption did not have a material impact on the Company’s consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (“ASU 2016-02”) which supersedes Topic 840, Leases. ASU 2016-02 requires lessees to recognize a right-of-use asset and a lease liability on their balance sheets for all the leases with terms greater than twelve months. Based on certain criteria, leases will be classified as either financing or operating, with classification affecting the pattern of expense recognition in the income statement. For leases with a term of twelve months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expense for such leases generally on a straight-line basis over the lease term. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, and interim periods within those years, with early adoption permitted. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients primarily focused on leases that commenced before the effective date of Topic 842, including continuing to account for leases that commence before the effective date in accordance with previous guidance, unless the lease is modified. The Company is evaluating the impact of the adoption of the standard on its consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, Improvements to Employee Share-Based Payment Accounting, which is intended to improve the accounting for share-based payment transactions as part of the FASB’s simplification initiative. The ASU changes certain aspects of the accounting for share-based payment award transactions, including: (1) accounting for income taxes; (2) classification of excess tax benefits on the statement of cash flows; (3) forfeitures; (4) minimum statutory tax withholding requirements; and (5) classification of employee taxes paid on the statement of cash flows when an employer withholds shares for tax withholding purposes. The ASU is effective for fiscal years beginning after December 15, 2016, and interim periods within those years for public business entities. We do not expect the adoption of this updated standard to have a material impact on our consolidated financial statements and related disclosures.

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (“ASU 2014-09”). ASU 2014-09 supersedes the revenue recognition requirements of FASB ASC Topic 605, Revenue Recognition and most industry-specific guidance throughout the ASC, resulting in the creation of FASB ASC Topic 606, Revenue from Contracts with Customers. ASU 2014-09 requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. This ASU provides alternative methods of adoption. In August 2015, the FASB issued ASU 2015-14, Revenue from Contracts with Customers, Deferral of the Effective Date (“ASU 2015-14”). ASU 2015-14 defers the effective date of ASU 2014-09 by one year to December 15, 2017 for fiscal years, and interim periods within those years, beginning after that date and permits early adoption of the standard, but not before the original

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**3. Summary of Significant Accounting Policies – (continued)**

effective date for fiscal years beginning after December 15, 2016. In March 2016, the FASB issued ASU 2016-08, Revenue from Contracts with Customers, Principal versus Agent Considerations (Reporting Revenue Gross versus Net) (“ASU 2016-08”) clarifying the implementation guidance on principal versus agent considerations. Specifically, an entity is required to determine whether the nature of a promise is to provide the specified good or service itself (that is, the entity is a principal) or to arrange for the good or service to be provided to the customer by the other party (that is, the entity is an agent). The determination influences the timing and amount of revenue recognition. In April 2016, the FASB issued ASU 2016-10, Revenue from Contracts with Customers, Identifying Performance Obligations and Licensing, clarifying the implementation guidance on identifying performance obligations and licensing. Specifically, the amendments reduce the cost and complexity of identifying promised goods or services and improves the guidance for determining whether promises are separately identifiable. The amendments also provide implementation guidance on determining whether an entity’s promise to grant a license provides a customer with either a right to use the entity’s intellectual property (which is satisfied at a point in time) or a right to access the entity’s intellectual property (which is satisfied over time). The effective date and transition requirements for ASU 2016-08 and ASU 2016-10 are the same as the effective date and transition requirements for ASU 2014-09. The Company is currently assessing the potential impact of adopting ASU 2014-09, ASU 2016-08 and ASU 2016-10 on its financial statements and related disclosures.

On August 27, 2014, the FASB issued ASU 2014-15, Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern (“ASU 2014-15”), which requires an entity to evaluate whether conditions or events, in the aggregate, raise substantial doubt about the entity’s ability to continue as a going concern for one year from the date the financial statements are issued or are available to be issued. The guidance became effective January 1, 2017. The adoption of ASU 2014-15 is not expected to have an impact on our consolidated financial position, results of operations or cash flows.

**4. Significant Agreements**

***Sumitomo Dainippon Pharma Co., Ltd. (Sumitomo Dainippon)***

In March 2011, the Company entered into an exclusive license agreement with Sumitomo Dainippon to research, develop and commercialize OCA as a therapeutic for the treatment of PBC and NASH in Japan and China (excluding Taiwan). Under the terms of the license agreement, the Company received an up-front payment from Sumitomo Dainippon of \$15.0 million and may be eligible to receive additional milestone payments of up to an aggregate of approximately \$30.0 million in development milestones based on the initiation or completion of clinical trials, \$70.0 million in regulatory approval milestones and \$200.0 million in sales milestones. The regulatory approval milestones include \$15.0 million for receiving marketing approval of OCA for NASH in Japan, \$10.0 million for receiving marketing approval of OCA for NASH in China, and \$5.0 million for receiving marketing approval of OCA for PBC in the United States, which was achieved upon the FDA approval of Ocaliva for the treatment of PBC in May 2016. As of December 31, 2016, the Company had achieved \$6.0 million of the development milestones under its collaboration agreement with Sumitomo Dainippon. The sales milestones are based on aggregate sales amounts of OCA in the Sumitomo Dainippon territory and include \$5.0 million for achieving net sales of \$50.0 million, \$10.0 million for achieving net sales of \$100.0 million, \$20.0 million for achieving net sales of \$200.0 million, \$40.0 million for achieving net sales of \$400.0 million and \$120.0 million for achieving net sales of \$1.2 billion. The Company has determined that each potential future development, regulatory and sales milestone is substantive. In May 2014, Sumitomo Dainippon exercised its option under the license agreement to add Korea as part of its licensed territories and paid the Company a \$1.0 million up-front fee. Sumitomo Dainippon has the option to add several other Asian countries to its territory to pursue OCA for additional indications. Sumitomo Dainippon will be responsible for the costs of developing and commercializing OCA in its territories. Sumitomo Dainippon is also required to make royalty payments ranging from the tens to the twenties in percent based on net sales of OCA products in the Sumitomo Dainippon territory.

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Significant Agreements – (continued)

The Company evaluated the license agreement with Sumitomo Dainippon and determined that it is a revenue arrangement with multiple deliverables, or performance obligations. The Company's substantive performance obligations under this license include an exclusive license to its technology, technical and scientific support to the development plan and participation on a joint steering committee. The Company determined that these performance obligations represent a single unit of accounting, since, initially, the license does not have stand-alone value to Sumitomo Dainippon without the Company's technical expertise and steering committee participation during the development of OCA. This development period is currently estimated as continuing through June 2020 and, as such, the up-front payment and payments made in respect of the Korea option are being recognized ratably over this period. During the year ended December 31, 2016 and 2015, the Company recorded revenue of approximately \$6.8 million and \$2.8 million, respectively.

5. Cash, Cash Equivalents, and Investments

The following table summarizes the Company's cash, cash equivalents and investments as of December 31, 2016 and December 31, 2015:

	As of December 31, 2016			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(in thousands)			
<b>Cash and cash equivalents:</b>				
Cash and money market funds	\$ 43,675	\$ —	\$ —	\$ 43,675
<b>Investment securities:</b>				
Commercial paper	66,185	—	(71)	66,114
Corporate debt securities	554,847	14	(1,443)	553,418
U.S. government and agency securities	26,254	—	(76)	26,178
Total investments	647,286	14	(1,590)	645,710
Total cash, cash equivalents and investments	\$ 690,961	\$ 14	\$ (1,590)	\$ 689,385

	As of December 31, 2015			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(in thousands)			
<b>Cash and cash equivalents:</b>				
Cash and money market funds	\$ 32,742	\$ —	\$ —	\$ 32,742
<b>Investment securities:</b>				
Commercial paper	1,993	—	(3)	1,990
Corporate debt securities	529,368	2	(1,720)	527,650
U.S. government and agency securities	65,854	1	(182)	65,673
Total investments	597,215	3	(1,905)	595,313
Total cash, cash equivalents and investments	\$ 629,957	\$ 3	\$ (1,905)	\$ 628,055

The Company held a total of two positions as of December 31, 2016 and no positions as of December 31, 2015 that were in an unrealized loss position for more than twelve months.

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5. Cash, Cash Equivalents, and Investments – (continued)

The fair value for the Company's available-for-sale investments, which have been in an unrealized loss position for less than and longer than 12 months is as follows:

	As of December 31, 2016					
	Less than 12 months		12 Months or greater		Total	
	(in thousands)					
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate debt securities	\$341,823	\$ (510)	\$178,818	\$ (933)	\$520,641	\$ (1,443)
U.S. government and agency securities	19,479	(30)	6,699	(46)	26,178	(76)
Commercial paper	66,114	(71)	—	—	66,114	(71)
Total	<u>\$427,416</u>	<u>\$ (611)</u>	<u>\$185,517</u>	<u>\$ (979)</u>	<u>\$612,933</u>	<u>\$ (1,590)</u>

	As of December 31, 2015					
	Less than 12 months		12 Months or greater		Total	
	(in thousands)					
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate debt securities	\$316,036	\$ (551)	\$201,676	\$ (1,169)	\$517,712	\$ (1,720)
Commercial paper	15,793	(30)	44,879	(152)	60,672	(182)
U.S. government and agency securities	1,990	(3)	—	—	1,990	(3)
Total	<u>\$333,819</u>	<u>\$ (584)</u>	<u>\$246,555</u>	<u>\$ (1,321)</u>	<u>\$580,374</u>	<u>\$ (1,905)</u>

6. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following:

	December 31,	
	2016	2015
	(in thousands)	
Prepaid expenses and other receivables	\$ 6,145	\$ 9,947
Interest receivable	3,209	3,304
Contract receivable	—	47
Refundable tax credits	—	340
Prepaid expenses and other current assets	<u>\$ 9,354</u>	<u>\$ 13,638</u>

[TABLE OF CONTENTS](#)

## INTERCEPT PHARMACEUTICALS, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**7. Fixed Assets, Net**

Fixed assets are stated at cost and depreciated or amortized using the straight-line method based on useful lives as follows:

	Useful lives (Years)	December 31,	
		2016	2015
		(in thousands)	
Office equipment and software	3	\$ 4,942	\$ 2,188
Leasehold improvements	Over life of lease	6,668	6,818
Furniture and fixtures	7	4,202	3,402
Subtotal		15,812	12,408
Less: accumulated depreciation		(4,517)	(2,361)
Fixed assets, net		<u>\$ 11,295</u>	<u>\$ 10,047</u>

Depreciation expense for the years ended December 31, 2016, 2015 and 2014 was approximately \$3.8 million, \$1.7 million, and \$443,000, respectively.

**8. Inventory**

Inventories are stated at the lower of cost or market. Inventories consist of the following:

	December 31,	
	2016	2015
	(in thousands)	
Work-in-process	\$ 2,207	\$ —
Finished goods	72	—
Inventory, net	<u>\$ 2,279</u>	<u>\$ —</u>

**9. Accounts Payable, Accrued Expenses and Other Liabilities**

Accounts payable, accrued expenses and other liabilities consisted of the following:

	December 31,	
	2016	2015
	(in thousands)	
Accounts payable	\$ 6,722	\$ 4,170
Accrued employee compensation	19,287	11,414
Accrued contracted services and other	39,542	30,007
Accounts payable, accrued expenses and other liabilities	<u>\$ 65,551</u>	<u>\$ 45,591</u>

**10. Long-Term Debt**

Debt, net of discounts and deferred financing costs, consists of the following:

	December 31,	
	2016	2015
	(in thousands)	
Long-term debt	\$ 341,356	\$ —
Less current portion	—	—
Long-term debt outstanding	<u>\$ 341,356</u>	<u>\$ —</u>

On July 6, 2016, the Company issued \$460.0 million aggregate principal amount of the Convertible Notes. The Company received net proceeds of \$447.6 million after deducting underwriting discounts and estimated offering expenses of approximately \$12.4 million. The Company used approximately \$38.4 million

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**10. Long-Term Debt – (continued)**

of the net proceeds from the offering to fund the payment of the cost of the capped call transactions that were entered into in connection with the issuance of the Convertible Notes.

The Convertible Notes are senior unsecured obligations of the Company. Interest is payable semi-annually on January 1 and July 1 of each year, beginning on January 1, 2017. The Convertible Notes mature on July 1, 2023, unless earlier repurchased, redeemed or converted. The Convertible Notes are convertible at the option of holders, under certain circumstances and during certain periods, into cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. The initial conversion rate of the Convertible Notes is 5.0358 shares of the Company's common stock per \$1,000 principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$198.58 per share of the Company's common stock. The conversion rate is subject to adjustment upon the occurrence of certain events. The Company may redeem for cash all or part of the Convertible Notes, at its option, on or after July 6, 2021, under certain circumstances at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

The capped call transactions are expected generally to reduce the potential dilution upon conversion of the Convertible Notes in the event that the market price per share of the Company's common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the Convertible Notes, and is subject to anti-dilution adjustments generally similar to those applicable to the conversion rate of the Convertible Notes. The cap price of the capped call transactions is initially \$262.2725 per share, and is subject to certain adjustments under the terms of the capped call transactions. If, however, the market price per share of the Company's common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution upon conversion of the Convertible Notes to the extent that such market price exceeds the cap price of the capped call transactions.

In accordance with ASC Subtopic 470-20, the Company used an effective interest rate of 8.4% to determine the liability component of the Convertible Notes. This resulted in the recognition of \$334.4 million as the liability component of the Convertible Notes and the recognition of the residual \$113.1 million as the debt discount with a corresponding increase to additional paid-in capital for the equity component of the Convertible Notes.

Interest expense was \$14.2 million for the year ended December 31, 2016 related to the Convertible Notes. Accrued interest on the Convertible Notes was approximately \$7.3 million as of December 31, 2016. The Company recorded debt issuance costs of \$12.4 million, which are being amortized using the effective interest method. As of December 31, 2016, \$11.7 million of debt issuance costs are recorded on the consolidated balance sheet in Long-Term Debt, in accordance with ASU 2015-03. As of December 31, 2016, the Company had outstanding borrowings of \$460.0 million related to the Convertible Notes.

**11. Fair Value Measurements**

The carrying amounts of the Company's receivables and payables approximate their fair value due to their short maturities.

Accounting principles provide guidance for using fair value to measure assets and liabilities. The guidance includes a three level hierarchy of valuation techniques used to measure fair value, defined as follows:

- Unadjusted Quoted Prices — The fair value of an asset or liability is based on unadjusted quoted prices in active markets for identical assets or liabilities (Level 1).

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

11. Fair Value Measurements – (continued)

- Pricing Models with Significant Observable Inputs — The fair value of an asset or liability is based on information derived from either an active market quoted price, which may require further adjustment based on the attributes of the financial asset or liability being measured, or an inactive market transaction (Level 2).
- Pricing Models with Significant Unobservable Inputs — The fair value of an asset or liability is primarily based on internally derived assumptions surrounding the timing and amount of expected cash flows for the financial instrument. Therefore, these assumptions are unobservable in either an active or inactive market (Level 3).

The Company considers an active market as one in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. Conversely, the Company views an inactive market as one in which there are few transactions for the asset or liability, the prices are not current, or price quotations vary substantially either over time or among market makers. Where appropriate, non-performance risk, or that of a counterparty, is considered in determining the fair values of liabilities and assets, respectively.

The Company's cash deposits and money market funds are classified within Level 1 of the fair value hierarchy because they are valued using bank balances or quoted market prices. Investments are classified as Level 2 instruments based on market pricing and other observable inputs.

Financial assets carried at fair value are classified in the tables below in one of the three categories described above:

	Total	Fair Value Measurements Using		
		Level 1	Level 2	Level 3
(in thousands)				
<b>December 31, 2016</b>				
Assets:				
Money market funds	\$ 11,755	\$ 11,755	\$ —	\$ —
Available for sale securities:				
Commercial paper	66,114	—	66,114	—
Corporate debt securities	553,418	—	553,418	—
U.S. government and agency securities	26,178	—	26,178	—
Total financial assets:	<u>\$ 657,465</u>	<u>\$ 11,755</u>	<u>\$ 645,710</u>	<u>\$ —</u>
<b>December 31, 2015</b>				
Assets:				
Money market funds	\$ 4,826	\$ 4,826	\$ —	\$ —
Available for sale securities:				
Commercial paper	1,990	—	1,990	—
Corporate debt securities	527,650	—	527,650	—
U.S. government and agency securities	65,673	—	65,673	—
Total financial assets:	<u>\$ 600,139</u>	<u>\$ 4,826</u>	<u>\$ 595,313</u>	<u>\$ —</u>

## INTERCEPT PHARMACEUTICALS, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**11. Fair Value Measurements – (continued)**

The estimated fair value of marketable debt securities (commercial paper, corporate debt securities, U.S. government and agency securities, and municipal securities) as of December 31, 2016 and 2015, respectively, by contractual maturity, are as follows:

	Fair Value as of December 31,	
	2016	2015
	(in thousands)	
Due in one year or less	\$ 456,184	\$ 343,758
Due after one year through 2 years	189,526	251,555
Total investments in debt securities	<u>\$ 645,710</u>	<u>\$ 595,313</u>

Actual maturities may differ from contractual maturities because issuers may have the right to call or prepay obligations without call or prepayment penalties.

**12. Stockholders' Equity and Preferred Stock*****Common Stock***

As of December 31, 2016 and December 31, 2015, the Company had 45,000,000 and 35,000,000 authorized shares of common stock, \$0.001 par value per share, respectively. At the 2016 annual meeting of stockholders held on July 19, 2016, the Company's stockholders approved an amendment to the Company's restated certificate of incorporation, as amended, to increase the number of authorized shares of common stock from 35,000,000 shares to 45,000,000 shares.

In February 2015, the Company completed a public offering of 1,150,000 shares of its common stock at a public offering price of \$176.00 per share. The shares were registered pursuant to a registration statement on Form S-3. After underwriting discounts and commissions and offering expenses, the Company received net proceeds of approximately \$191.7 million.

In April 2015, the Company completed a public offering of 1,330,865 shares of its common stock pursuant to a registration statement on Form S-3. After underwriting discounts and commissions and offering expenses, the Company received net proceeds of approximately \$367.1 million.

***Dividends***

The holders of common stock are entitled to receive dividends from time to time as declared by the board of directors. The Company has not declared any cash dividends on its common stock, and does not anticipate paying any cash dividends on its common stock in the foreseeable future. The Company intends to retain all available funds and any future earnings to fund the development and expansion of its business. Any future determination to pay dividends will be at the discretion of the board of directors and will depend upon a number of factors, including the results of operations, financial condition, future prospects, contractual restrictions, restrictions imposed by applicable law and other factors the board of directors deems relevant.

***Voting***

The holders of shares of common stock are entitled to one vote for each share held with respect to all matters voted on by the stockholders of the Company.

***Preferred Stock***

As of December 31, 2016 and 2015, the Company had 5,000,000 authorized shares of preferred stock, \$0.001 par value per share, of which none are issued.

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**13. Stock Compensation**

The 2012 Equity Incentive Plan (2012 Plan) became effective upon the pricing of the IPO in October 2012. At the same time, the 2003 Stock Incentive Plan (2003 Plan) was terminated and 555,843 shares available under the 2003 Plan were added to the 2012 Plan.

The estimated fair value of the options that have been granted under the 2003 and 2012 Plans is determined utilizing the Black-Scholes option-pricing model at the date of grant. The fair value of the RSUs and RSAs that have been granted under the 2012 Plan is determined utilizing the closing stock price on the date of grant. There were approximately 1.5 million and 1.2 million shares available for grant remaining under the 2012 Plan at December 31, 2016 and 2015, respectively. On January 1, 2016 and 2015, the numbers of shares reserved for issuance under the 2012 Plan was increased by 976,101, and 856,609 shares, respectively, as a result of the automatic increase in shares reserved pursuant to the terms thereof.

**Stock Options**

The Company estimated the fair value of stock options granted in the periods presented using a Black-Scholes option-pricing model utilizing the following assumptions:

	Years Ended December 31,		
	2016	2015	2014
Volatility	60 – 66%	61 – 90%	70 – 150%
Expected term (in years)	5.1 – 10.0	5.1 – 7.0	4.0 – 7.0
Risk-free rate	1.1 – 2.4%	0.2 – 2.2%	1.3 – 2.7%
Expected dividend yield	—%	—%	—%

The stock price for options granted prior to the IPO was determined based on a valuation of the Company’s common stock. For options granted after the IPO, the stock price is the closing price on the date of grant. The risk-free interest rate was based on the rate for U.S. Treasury securities at the date of grant with maturity dates approximately equal to the expected life at the grant date. The Company uses historical data to estimate the expected term of the option; separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. The expected term of options granted represents the period of time the options are expected to be outstanding. The expected volatility was estimated based on historical volatility information of peer companies that are publicly available.

The Company’s combined outstanding employee and non-employee option activity for the period from December 31, 2015 through December 31, 2016 is summarized as follows:

	Number of Shares (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2015	1,348	\$ 108.49	7.3	\$ 91,402
Granted	481	\$ 112.82	6.1	\$ —
Exercised	(185)	\$ 28.07	—	\$ 21,987
Cancelled/forfeited	(81)	\$ 129.91	—	\$ —
Expired	(10)	\$ 177.02	—	\$ —
Outstanding at December 31, 2016	1,553	\$ 117.80	7.4	\$ 48,308
Expected to vest	1,531	\$ 117.40	7.3	\$ 48,199
Exercisable	797	\$ 90.73	6.1	\$ 43,156

The aggregate intrinsic value of options is calculated as the difference between the exercise price of the underlying options and the deemed fair value of the Company’s common stock for those shares that had exercise prices lower than the deemed fair value of the Company’s common stock. As of December 31, 2016, the total compensation cost related to non-vested option awards not yet recognized is approximately

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**13. Stock Compensation – (continued)**

\$38.9 million with a weighted average remaining vesting period of 2.72 years. The weighted-average grant date fair value of options granted during the year ended December 31, 2016 is \$64.80. The total fair value of shares underlying options that vested in 2016 was \$18.2 million.

In April 2014, the Company issued 57,063 performance-based options to certain employees to purchase common stock that will vest upon the achievement of certain regulatory milestones related to OCA at future dates. In November 2014, the Company issued an additional 10,839 performance-based options that will vest upon the achievement of the same regulatory milestones noted above. As of both December 31, 2016 and 2015, the achievement of the milestones was not deemed to be probable and no stock-based compensation expense was recognized for these performance-based options.

**Restricted Stock Units and Awards**

The following table summarizes the aggregate activities in relation to RSU and RSA activity for the years ended December 31, 2016 and 2015:

	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value
Non-vested Shares at December 31, 2015	193	\$ 183.19
Granted	312	\$ 117.63
Exercised	(92)	\$ 161.03
Cancelled/forfeited	(32)	\$ 159.22
Non-vested Shares at December 31, 2016	<u>381</u>	<u>\$ 136.89</u>

As of December 31, 2016, there was \$41.6 million of unrecognized compensation expense related to unvested RSUs and RSAs, which is expected to be recognized over a weighted average of 2.47 years.

In October 2016, the Company issued 11,725 shares of restricted stock awards to a certain employee that will vest upon the achievement of certain regulatory and commercial milestones. For the year ended December 31, 2016, no stock-based compensation expense was recognized for these awards.

Stock-based compensation expense has been reported in our statements of operations as follows:

	Years Ended December 31,		
	2016	2015	2014
	(in thousands)		
Selling, general and administrative	\$ 32,073	\$ 16,223	\$ 8,418
Research and development	14,132	17,966	11,709
Total stock-based compensation	<u>\$ 46,205</u>	<u>\$ 34,189</u>	<u>\$ 20,127</u>

**14. Income Taxes**

The components of loss before income taxes for the years ended December 31, 2016, 2015 and 2014 includes the following:

	Years Ended December 31,		
	2016	2015	2014
	(in thousands)		
United States	\$(154,812)	\$(116,349)	\$(283,226)
Foreign	(258,018)	(110,080)	—
Total	<u>\$(412,830)</u>	<u>\$(226,429)</u>	<u>\$(283,226)</u>

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

14. Income Taxes – (continued)

Income tax expense (benefit) differed from the amounts computed by applying the U.S. Federal income tax rate of 34% to loss before income taxes as a result of the following:

	Years Ended December 31,		
	2016	2015	2014
	(in thousands)		
Computed “expected” tax benefit	\$(140,362)	\$(76,986)	\$ (96,297)
State taxes, net of U.S. Federal benefit	—	—	—
U.S. Federal valuation allowance	40,377	40,973	36,052
Stock-based compensation	5,161	(3,230)	342
Officer compensation	50	(1,778)	1,784
Foreign tax rate differences	94,901	37,427	—
Intercompany license of intellectual property	—	3,400	—
Mark to market warrant income	—	—	58,083
Other	(127)	194	36
Total	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

The tax effects of temporary differences that give rise to the deferred tax assets and liabilities at December 31, 2016 and 2015 are presented below:

	December 31,	
	2016	2015
	(in thousands)	
Deferred tax assets:		
Net operating loss and other carryforwards	\$ 220,175	\$ 127,364
Stock compensation	17,166	9,929
Deferred revenue	2,400	2,846
Accrued compensation	4,775	3,058
Accrued expense	1,841	1,447
Intellectual property	3,570	1,775
Other	759	802
Deferred tax assets before valuation allowance	250,686	147,221
Valuation allowance	(223,383)	(147,221)
Total deferred tax assets	27,303	—
Deferred tax liabilities:		
Convertible Note	(27,303)	—
Total deferred tax liabilities	(27,303)	—
Net deferred tax asset (liability)	<u>\$ —</u>	<u>\$ —</u>

**Net Operating Losses**

As of December 31, 2016 and 2015, the Company had net operating loss (“NOLs”) carryforwards for U.S. Federal income tax purposes of \$562.3 million and \$454.4 million, respectively, which expire between 2024 and 2036. The Company also has certain state and foreign NOLs in varying amounts depending on the different state and foreign tax laws.

The U.S. Federal NOLs of \$562.3 million and \$454.4 million include approximately \$167.9 million and \$151.0 million, respectively, of excess tax benefits related to stock-based payments that are not recognized as

**INTERCEPT PHARMACEUTICALS, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**14. Income Taxes – (continued)**

a deferred tax asset. The benefit of these deductions will be recognized through additional paid-in capital at the time the tax deduction results in a reduction of current taxes payable.

The Company's ability to utilize its NOLs may be limited under Section 382 of the Internal Revenue Code or similar rules. The Section 382 limitations apply if an "ownership change" occurs. Generally, an ownership change occurs when certain shareholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). The Company has evaluated whether one or more ownership changes under Section 382 have occurred since its inception and have determined that there have been at least two such changes. Although the Company believes that these ownership changes have not resulted in material limitations on its ability to use these NOLs, its ability to utilize these NOLs may be limited due to future ownership changes or for other reasons. Additionally, tax laws limit the time during which NOLs and certain other tax attributes may be utilized against future taxes. As a result, the Company may not be able to take full advantage of its carryforwards for U.S. Federal, state, and foreign tax purposes.

***Valuation Allowance***

At December 31, 2016 and 2015, the Company maintained a full valuation allowance on its deferred tax assets since it has not yet achieved sustained profitable operations. As a result, the Company has not recorded any income tax benefit since its inception. In 2016, the valuation allowance for deferred tax assets increased by approximately \$76.2 million. This includes an increase of \$40.4 million, \$7.0 million, and \$57.8 million for U.S. Federal, state, and foreign tax, respectively, partially offset by a decrease of \$29.0 million to equity. The decrease to equity primarily related to the U.S. Federal and state impact of the equity component associated with the Convertible Notes.

***Unrecognized Tax Benefits***

At December 31, 2016 and 2015, the Company had no reserves for unrecognized tax benefits.

The Company and its subsidiaries are subject to taxation in the U.S. and various foreign jurisdictions. Of the major jurisdictions, the Company is subject to examination in: the United States for U.S. Federal purposes for 2013 and forward and generally for state purposes for 2012 and forward; and the United Kingdom for 2014 and forward. However, NOLs are subject to audit in any tax year in which those losses are utilized, notwithstanding the year of origin. The Company's U.S. Federal tax return for the year ended December 31, 2014 is currently under audit by the Internal Revenue Service.

**15. Commitments**

***Facility Leases***

In May 2014, the Company entered into a lease agreement with The Irvine Company LLC for approximately 47,000 square feet in San Diego for office space. The lease term commenced in September 2014 and is scheduled to end in September 2019; however, the Company has an option to further extend the lease for an additional five year term at market rates prevailing at such time. The rent for the first year was approximately \$875,000 without giving effect to rent abatements and the rent will gradually increase every 12 months during the lease term. During the first nine months, the Company received a partial rent abatement from the landlord. The landlord provided the Company with an allowance of approximately \$2.4 million for improvements to the office space.

In January 2016, Intercept Pharma Europe Ltd. (IPEL), a wholly owned subsidiary of the Company, entered into an underlease with Performing Right Society, Ltd., for office space in the King's Cross area of London, United Kingdom. The Company is the guarantor to the underlease. The underlease provided IPEL with 8,549 square feet of space. The lease term is anticipated to end on May 31, 2024. The annual rent is approximately £726,665 (or approximately \$1.0 million), payable quarterly. IPEL is also required to pay VAT

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**15. Commitments – (continued)**

on the rent. IPEL is responsible for a portion of the insurance, certain service charges and taxes for the building based on the floor area rented by them.

In February 2016, the Company entered into a sublease with Restoration Hardware, Inc. for additional office space in New York City. The sublease provided the Company with an additional 10,785 square feet of space. The lease term is anticipated to end in July 2021. The annual rent is approximately \$1.0 million payable monthly. The Company is also responsible for its proportionate share of increases in operating expenses beginning January 2017 as well as its proportionate share of increases in real estate taxes over the average of the 2015/2016 and 2016/2017 fiscal years.

On December 7, 2016, the Company entered into lease agreements relating to the Company's new global corporate headquarters in the Hudson Yards development site in New York, New York. The leases will provide the Company with shorter term office space in 10 Hudson Yards (the "10 Building") and longer term office space in 55 Hudson Yards (the "55 Building").

The lease for the 10 Building will initially provide the Company with approximately 49,000 square feet of space consisting of the entire 37<sup>th</sup> floor and a portion of the 40<sup>th</sup> floor of the 10 Building (the "10 Lease"). The expiration date of the 10 Lease as it relates to the 37<sup>th</sup> floor premises is June 30, 2021. The expiration date of 10 Lease as it relates to the 40<sup>th</sup> floor premises (the "40<sup>th</sup> Floor Expiration Date") shall be the earlier to occur of (a) the date that is 285 days after the possession date under the 55 Lease (as defined below), which may be extended pursuant to the terms of the 55 Lease; (b) the date that the Company legally occupies the premises in the 55 Building (as defined below); and (c) June 30, 2021. The 10 Lease contains customary default provisions, including, without limitation, those relating to payment defaults, performance defaults, events of bankruptcy and customary indemnification provisions. The 10 Lease provides for annual fixed rental payments of approximately (i) \$5.2 million per year for the period commencing in April 2017 and ending on the day immediately preceding the 40<sup>th</sup> Floor Expiration Date and (ii) \$3.5 million per year commencing on the 40<sup>th</sup> Floor Expiration Date and ending on June 30, 2021. In addition to its fixed rent obligations, the Company is obligated to pay its percentage share for customary escalations for operating expenses attributable to the 10 Building and the Hudson Yards development, taxes and tax-related payments.

The lease for the 55 Building will provide the Company with approximately 85,000 square feet of space consisting of the 23<sup>rd</sup> through 25<sup>th</sup> floors of the 55 Building (the "55 Lease"). The 55 Lease will expire on the last day of the calendar month in which the 15<sup>th</sup> anniversary of the day preceding the Rent Commencement Date (as defined below) falls. Under the 55 Lease, the Company has an option to renew the term of the 55 Lease either for (i) two additional terms of five years each or (ii) one additional ten-year term. In addition, the 55 Lease contains customary default provisions, including, without limitation, those relating to payment defaults under the 55 Lease, performance defaults under the 55 Lease, events of bankruptcy and customary indemnification provisions. The 55 Lease provides for annual fixed rental payments of approximately (i) \$7.9 million per year for the period commencing on the date that is 12 months after the Company takes possession of its premises in the 55 Building (the "Rent Commencement Date") and ending on the day immediately preceding the 5<sup>th</sup> anniversary of the Rent Commencement Date; (ii) \$8.7 million per year for the period commencing on 5<sup>th</sup> anniversary of the Rent Commencement Date and ending on the day immediately preceding the 10<sup>th</sup> anniversary of the Rent Commencement Date; and (iii) \$9.6 million per year for the period commencing on 10<sup>th</sup> anniversary of the Rent Commencement Date and ending upon the expiration date of the 55 Lease. In addition to its fixed rent obligations, the Company is obligated to pay (x) certain incremental construction costs incurred by the landlord on behalf of the Company and (y) its percentage share for customary escalations for operating expenses attributable to the 55 Building and the Hudson Yards development, taxes and tax-related payments.

[TABLE OF CONTENTS](#)

## INTERCEPT PHARMACEUTICALS, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**15. Commitments – (continued)**

Rent expense under operating leases for facilities for the years ended December 31, 2016, 2015 and 2014 was approximately \$5.5 million, \$3.8 million, and \$1.7 million, respectively. As of December 31, 2016, minimum operating lease payments under non-cancelable leases, as amended, are as follows:

<u>Year Ending December 31,</u>	<u>Amount</u>
	(in thousands)
2017	\$ 9,191
2018	9,383
2019	16,159
2020	15,331
2021	12,746
Thereafter	107,076
Total future minimum operating lease payments	<u>\$ 169,886</u>

***Purchase Commitments***

The Company enters into license and research and development agreements with universities and other third parties. The Company enters into contracts in the normal course of business with contract research organizations for clinical trials, clinical and commercial supply manufacturing, with vendors for preclinical research studies and for other services and products for operating purposes. The agreements generally provide for termination within 90 days of notice. Such agreements are cancelable contracts and not included as purchase commitments. The Company has included as purchase obligations the Company's commitments under agreements to the extent they are quantifiable and are not cancelable, which is approximately \$11.9 million as of December 31, 2016.

**16. Related Party Transactions**

In connection with the April 2014 secondary offering, pursuant to the third amended and restated stockholders agreement, the Company reimbursed the selling stockholders for the expenses related to the offering (other than any underwriting discounts and commissions), including approximately \$70,000 for the legal fees of the selling stockholders.

**17. Net Loss Per Share**

The following table presents the historical computation of basic and diluted net loss per share:

	<u>Years Ended December 31,</u>		
	<u>2016</u>	<u>2015</u>	<u>2014</u>
	(in thousands, except per share amounts)		
Historical Net loss per share			
Numerator:			
Net loss attributable to common stockholders	\$ (412,830)	\$ (226,429)	\$ (283,226)
Denominator:			
Weighted average shares outstanding, basic and diluted	24,663	23,694	20,784
Net loss per share, basic and diluted	<u>\$ (16.74)</u>	<u>\$ (9.56)</u>	<u>\$ (13.63)</u>

INTERCEPT PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**17. Net Loss Per Share – (continued)**

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding as of December 31, 2016, 2015 and 2014, as they would have been anti-dilutive:

	December 31,		
	2016	2015	2014
	(in thousands)		
Options	1,553	1,348	1,436
Restricted stock units	382	193	119
<b>Total</b>	<b>1,935</b>	<b>1,541</b>	<b>1,555</b>

**18. Quarterly Financial Data (unaudited)**

The following table summarizes the unaudited quarterly financial data for the years ended December 31, 2016 and 2015;

	Quarters Ended				
	March 31,	June 30,	September 30,	December 31,	Total
	(in thousands, except for per share amounts)				
<b>2016</b>					
Revenues	\$ 445	\$ 5,520	\$ 5,177	\$ 13,809	\$ 24,951
Operating loss	(127,400)	(78,095)	(83,036)	(114,007)	(402,538)
Net loss	(126,674)	(77,299)	(88,815)	(120,042)	(412,830)
Net loss per common share – basic and diluted	\$ (5.17)	\$ (3.14)	\$ (3.59)	\$ (4.84)	
<b>2015</b>					
Revenues	\$ 1,447	\$ 445	\$ 445	\$ 445	\$ 2,782
Operating loss	(39,658)	(48,824)	(51,784)	(88,890)	(229,156)
Net loss	(39,386)	(47,894)	(50,896)	(88,253)	(226,429)
Net loss per common share – basic and diluted	\$ (1.78)	\$ (1.99)	\$ (2.10)	\$ (3.62)	

**19. Litigation**

On February 21, 2014 and February 28, 2014, purported shareholder class actions, styled *Scot H. Atwood v. Intercept Pharmaceuticals, Inc. et al.* and *George Burton v. Intercept Pharmaceuticals, Inc. et al.*, respectively, were filed in the United States District Court for the Southern District of New York, naming the Company and certain of its officers as defendants. These lawsuits were filed by stockholders who claim to be suing on behalf of anyone who purchased or otherwise acquired the Company's securities between January 9, 2014 and January 10, 2014.

The lawsuits alleged that the Company made material misrepresentations and/or omissions of material fact in its public disclosures during the period from January 9, 2014 to January 10, 2014, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The alleged improper disclosures relate to the Company's January 9, 2014 announcement that the FLINT trial had been stopped early based on a pre-defined interim efficacy analysis. Specifically, the lawsuits claimed that the January 9, 2014 announcement was misleading because it did not contain information regarding certain lipid abnormalities seen in the FLINT trial in OCA-treated patients compared to placebo.

**INTERCEPT PHARMACEUTICALS, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**19. Litigation – (continued)**

On April 22, 2014, two individuals each moved to consolidate the cases and a lead plaintiff was subsequently appointed by the Court. On June 27, 2014, the lead plaintiff filed an amended complaint on behalf of the putative class as contemplated by the order of the Court. The lead plaintiff was seeking unspecified monetary damages on behalf of the putative class and an award of costs and expenses, including attorneys' fees. On August 14, 2014, the defendants filed a motion to dismiss the complaint. Oral arguments on the motion to dismiss were held on February 24, 2015. On March 4, 2015, the defendants' motion to dismiss was denied by the Court. The defendants answered the amended complaint on April 13, 2015. On July 15, 2015, the plaintiff moved for class certification and appointment of class representatives and class counsel. On September 14, 2015, the defendants opposed the plaintiff's class certification motion. The plaintiff filed its reply to the defendants' opposition on October 14, 2015, to which the defendants filed a sur-reply on November 10, 2015. Oral arguments on the class certification motion were held on January 20, 2016.

On May 2, 2016, the defendants reached an agreement with the lead plaintiff to seek Court approval of a proposed resolution. The plaintiffs moved for preliminary approval of the proposed settlement on May 5, 2016. On May 23, 2016, the Court entered an order preliminarily approving the settlement. The Court ordered that notice be provided to the class and preliminarily approved the proposed settlement, including the payment of \$55.0 million, of which \$10.0 million was agreed to be funded by the Company's insurers. The settlement was paid into escrow in June 2016, with distribution to the class to occur after the Court had finally approved the settlement and the plan of allocation of those proceeds. On September 8, 2016, the Court granted final approval of the settlement. The final judgment and order of the Court included a dismissal of the action with prejudice against all defendants. The defendants do not admit any liability as part of the settlement.

**20. Subsequent Events**

On January 1, 2017, the numbers of shares reserved for issuance under the 2012 Plan was increased by 993,558 shares, as a result of the automatic increase in shares reserved pursuant to the terms thereof.

The Company has evaluated events subsequent to the balance sheet dates and determined there have not been any other events that have occurred that would require adjustment to or disclosure in the consolidated financial statements.

[TABLE OF CONTENTS](#)**Exhibit List**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Filed with this Report</b>	<b>Incorporated by Reference herein from Form or Schedule</b>	<b>Filing Date</b>	<b>SEC File/Reg. Number</b>
3.1	Restated Certificate of Incorporation, as amended		Form 10-Q (Exhibit 3.1)	08/09/16	001-35668
3.2	Restated Bylaws of the Registrant		Form 8-K (Exhibit 3.2)	02/17/16	001-35668
4.1	Form of Common Stock Certificate of the Registrant		Form S-8 (Exhibit 4.3)	11/07/12	333-184810
4.2	Third Amended and Restated Stockholders Agreement by and among the Registrant, the holders of the Registrant's convertible preferred stock, the Registrant's founders and certain other investors, dated August 9, 2012		Form S-1 (Exhibit 4.2)	09/04/12	333-183706
4.3	Indenture by and between the Registrant and U.S. Bank National Association, a national banking association, as trusted, dated July 6, 2016		Form 8-K (Exhibit 4.1)	07/06/16	001-35668
4.4	First Supplemental Indenture (including the Form of Note) by and between the Registrant and U.S. Bank National Association, a national banking association, as trustee, dated July 6, 2016		Form 8-K (Exhibit 4.2)	07/06/16	001-35668
10.1.1	Call Option Confirmation by and between the Registrant and Royal Bank of Canada, dated June 30, 2016		Form 8-K (Exhibit 10.1)	07/06/16	001-35668
10.1.2	Additional Call Option Confirmation by and between the Registrant and Royal Bank of Canada, dated July 1, 2016		Form 8-K (Exhibit 10.2)	07/06/16	001-35668
10.1.3	Call Option Confirmation by and between the Registrant and UBS AG, London Branch, dated June 30, 2016		Form 8-K (Exhibit 10.3)	07/06/16	001-35668
10.1.4	Additional Call Option Confirmation by and between the Registrant and UBS AG, London Branch, dated July 1, 2016		Form 8-K (Exhibit 10.4)	07/06/16	001-35668
10.1.5	Call Option by and between the Registrant and Credit Suisse Capital LLC, dated June 30, 2016		Form 8-K (Exhibit 10.5)	07/06/16	001-35668
10.1.6	Additional Call Option by and between the Registrant and Credit Suisse Capital LLC, dated July 1, 2016		Form 8-K (Exhibit 10.6)	07/06/16	001-35668

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**TABLE OF CONTENTS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Filed with this Report</b>	<b>Incorporated by Reference herein from Form or Schedule</b>	<b>Filing Date</b>	<b>SEC File/Reg. Number</b>
10.2	Commercial Manufacturing and Supply Agreement by and between the Registrant and PharmaZell GMBH, dated August 12, 2016*		Form 10-Q (Exhibit 10.8)	11/09/16	001-35668
<b>Equity Compensation Plans</b>					
10.3.1	Amended and Restated 2003 Stock Incentive Plan of the Registrant+		Form S-1 (Exhibit 10.1.1)	09/04/12	333-183706
10.3.2	Form of Nonstatutory Stock Option Agreement granted under the 2003 Stock Incentive Plan of the Registrant+		Form S-1 (Exhibit 10.1.2)	09/04/12	333-183706
10.3.3	Form of Incentive Stock Option Agreement granted under the 2003 Stock Incentive Plan of the Registrant+		Form S-1 (Exhibit 10.1.3)	09/04/12	333-183706
10.3.4	Amendment to Amended and Restated 2003 Stock Incentive Plan of the Registrant+		Form S-1 (Exhibit 10.1.4)	09/04/12	333-183706
10.4.1	Form of 2012 Equity Incentive Plan of the Registrant+		Amendment No. 1 to Form S-1 (Exhibit 10.2.1)	09/27/12	333-183706
10.4.2	Form of Stock Option Grant Notice for Directors under the 2012 Equity Incentive Plan of the Registrant+		Amendment No. 1 to Form S-1 (Exhibit 10.2.2)	09/27/12	333-183706
10.4.3	Form of Stock Option Grant Notice for Employees and Consultants under the 2012 Equity Incentive Plan of the Registrant+		Amendment No. 1 to Form S-1 (Exhibit 10.2.3)	09/27/12	333-183706
10.4.4	Form of Restricted Stock Unit Award Grant Notice for Directors under the 2012 Equity Incentive Plan of the Registrant+		Amendment No. 1 to Form S-1 (Exhibit 10.2.4)	09/27/12	333-183706
10.4.5	Form of Restricted Stock Unit Award Grant Notice for Employees and Consultants under the 2012 Equity Incentive Plan of the Registrant+		Amendment No. 1 to Form S-1 (Exhibit 10.2.5)	09/27/12	333-183706
10.4.6	Form of Restricted Stock Award Grant Notice for Directors under the 2012 Equity Incentive Plan of the Registrant+		Form 10-Q (Exhibit 10.3)	05/09/14	001-35668
10.4.7	Form of Restricted Stock Award Grant Notice for Employees and Consultants under the 2012 Equity Incentive Plan of the Registrant+		Form 10-Q (Exhibit 10.4)	05/09/14	001-35668
10.5	Non-Employee Director Compensation Policy+		Form 8-K (Exhibit 10.1)	02/17/16	001-35668

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**TABLE OF CONTENTS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Filed with this Report</b>	<b>Incorporated by Reference herein from Form or Schedule</b>	<b>Filing Date</b>	<b>SEC File/Reg. Number</b>
<b>Agreements with Executive Officers and Directors</b>					
10.6	Amended and Restated Employment Agreement by and between the Registrant and Mark Pruzanski, dated May 14, 2013+		Form 10-Q (Exhibit 10.5)	05/14/13	001-35668
10.7.1	Amended and Restated Employment Agreement by and between the Registrant and Barbara Duncan, effective as of May 14, 2013+		Form 10-Q (Exhibit 10.12)	05/14/13	001-35668
10.7.2	Letter Agreement by and between the Registrant and Barbara Duncan, effective as of February 12, 2016+		Form 10-Q (Exhibit 10.1)	05/10/16	001-35668
10.7.3	Letter Agreement by and between the Registrant and Barbara Duncan, effective as of June 27, 2016+		Form 10-Q (Exhibit 10.2)	08/09/16	001-35668
10.8	Amended and Restated Employment Agreement by and between the Registrant and David Shapiro, effective as of May 14, 2013+		Form 10-Q (Exhibit 10.11)	05/14/13	001-35668
10.9	Employment Agreement by and between the Registrant and Rachel McMinn, effective as of April 30, 2014+		Form 10-Q (Exhibit 10.2)	05/09/14	001-35668
10.10	Employment Agreement by and between the Registrant and Sandip S. Kapadia, effective as of May 3, 2016+		Form 10-Q (Exhibit 10.1.1)	08/09/16	001-35668
10.11	Employment Agreement by and between the Registrant and Lisa Bright, effective as of October 7, 2016+	X			
10.12	Form of Indemnification Agreement by and between the Registrant and each of its directors and executive officers		Form S-1 (Exhibit 10.7)	09/04/12	333-183706
<b>Lease Agreements</b>					
10.13	Lease Agreement between Jamestown 405 West 15 <sup>th</sup> Street, L.P. and the Registrant, dated October 15, 2013		Form 8-K (Exhibit 10.1)	10/21/13	001-35668
10.14.1	Lease Agreement between The Irvine Company LLC and the Registrant, dated May 1, 2014		Form 8-K (Exhibit 10.1)	05/07/14	001-35668
10.14.2	Amended Lease Agreement between the Irvine Company LLC and the Registrant, dated July 19, 2016		Form 10-Q (Exhibit 10.7)	11/09/16	001-35668
10.15	Underlease between the Registrant, Intercept Pharma Europe, Ltd. and Performing Right Society, Ltd., dated January 22, 2016		Form 10-K (Exhibit 10.12)	02/29/16	001-35668

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[TABLE OF CONTENTS](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Filed with this Report</u>	<u>Incorporated by Reference herein from Form or Schedule</u>	<u>Filing Date</u>	<u>SEC File/Reg. Number</u>
10.16	Office Sublease between the Registrant and Restoration Hardware, Inc., dated February 23, 2016		Form 10-K (Exhibit 10.13)	02/29/16	001-35668
10.17	Lease Agreement between Legacy Yards Tenant LP and the Registrant, dated December 7, 2016	X			
10.18	Lease Agreement between Hudson Yards Owner LLC and the Registrant, dated December 7, 2016	X			
<b>Agreements with Respect to Collaborations, Licenses, Research and Development</b>					
10.19	License Agreement by and between the Registrant and Sumitomo Dainippon Pharma Co. Ltd., dated March 29, 2011*		Amendment No. 1 to Form S-1 (Exhibit 10.10)	09/27/12	333-183706
<b>Other Exhibits</b>					
12.1	Computation of Ratio of Earnings to Fixed Charges for the Year Ended December 31, 2016	X			
21.1	Subsidiaries of the Registrant	X			
23.1	Consent of KPMG LLP, independent registered public accounting firm	X			
31.1	Certification of the Chief Executive Officer	X			
31.2	Certification of the Chief Financial Officer	X			
32	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
101	The following materials from Intercept Pharmaceuticals, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations and Comprehensive Loss, (iii) Consolidated Statements of Changes in Stockholders' Equity, (iv) Consolidated Statements of Cash Flows, and (v) Notes to Consolidated Financial Statements	X			

(+) Management contract or compensatory plan or arrangement.

(\*) Confidential treatment has been granted by the Securities and Exchange Commission as to certain portions.

**DATED: 7<sup>th</sup> October 2016**

**(1) INTERCEPT PHARMA EUROPE LTD**

**and**

**(2) LISA BRIGHT MORRISON**

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**SERVICE AGREEMENT**

**UK EMPLOYEE**

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**THIS AGREEMENT** is made the 7<sup>th</sup> day of October 2016

**BETWEEN**

1 **INTERCEPT PHARMA EUROPE LIMITED** registered in England and Wales under company number 09224395 whose registered office is at One Glass Wharf, Bristol BS2 0ZX (the “**Company**”); and

2 **LISA BRIGHT MORRISON** (the “**Employee**”)

The Employee was employed as Chief Commercial and Corporate Affairs Officer and is being offered employment as President of International as an alternative to avoid her redundancy, which the Company acknowledges would otherwise constitute termination of the Employee’s employment by Equity Good Reason.

The Board and the Board of the Parent have approved the terms of this Agreement under which the Employee is to be employed, and in particular clause 9.

**1 INTERPRETATION**

1.1 In this Agreement the following words and expressions have the following meanings unless inconsistent with the context:

- |                                       |   |
|---------------------------------------|---|
| the “ <b>Board</b> ”                  | means the board of directors from time to time of the Company or a Parent (as the case may be) and includes any committee of the board of directors duly appointed by it;   |
| “ <b>Change in Control</b> ”          | shall have the meaning set out in clause 9.7 below;   |
| the “ <b>Companies Acts</b> ”         | means the Companies Act 1985, the Companies Act 1989 and the Companies Act 2006;  |
| the “ <b>Compensation Committee</b> ” | means the compensation committee of the Board from time to time;  |
| the “ <b>Employment</b> ”             | means the Employee’s employment under this Agreement;   |
| “ <b>Employment Inventions</b> ”      | means any Invention which is made wholly or partially by the Employee at any time during the course of her employment with the Company (whether or not during working hours or using Company premises or resources and whether or not recorded in material form); |
| “ <b>Employment IPRs</b> ”            | means Intellectual Property Rights created by the Employee in the course of her employment with the Company (whether or not during working hours or using Company premises or resources);   |
| the “ <b>ERA</b> ”                    | means the Employment Rights Act 1996;   |
-

**“ Equity Awards ”**

means those equity based awards that may be granted to the Employee pursuant to the Share Scheme from time to time including, but not limited to stock options granted to the Employee under the Share Scheme to purchase shares of common stock and restricted stock awards granted to the Employee pursuant to the Share Scheme. The parties agree that the Equity Awards granted to the Employee as at the date of this Agreement are those particularised at schedule 3.

**“ Equity Cause ”**

termination of the Employment upon:

- (a) a good faith finding by the Company that (i) the Employee has been engaged in material dishonesty, wilful misconduct or gross negligence; (ii) the Employee has breached or has threatened to breach any agreement between the Employee and the Company or any Group Company related to intellectual property, non-disclosure or non-solicitation of employees or customers; or (iii) the Employee being in material breach of this Agreement and the Employee has failed to cure such conduct or breach within 30 days after the Employee’s receipt of written notice from the Company of such breach; or
- (b) the Employee’s conviction or guilty plea of any crime involving fraud, bribery, embezzlement or any other criminal offence.

**“ Equity Good Reason ”**

termination of the Employment by reason of:

- (a) any action or omission by the Company or any Group Company which results in a material diminution in the Employee’s position, status, offices, titles, authority, responsibilities or reporting requirements (other than the change in reporting line pursuant to clause 2.2); or
- (b) a change by the Company in the location at which the Employee performs her principal duties for the Company to a different location that is more than 50 miles from the location at which the Employee performed her principal duties for the Company immediately prior to the date on which such change occurs; or
- (c) any material breach by the Company of this Agreement.

In addition, notwithstanding any of the events set out in clauses (a) to (c) above, such occurrence shall not be deemed to constitute Equity Good Reason if, within 30 days after the Company's receipt of written notice from the Employee of the occurrence or existence of an event or circumstances enumerated in clauses (a) to (c) above, such event or circumstance has been remedied by the Company. The Employee shall not be deemed to have terminated her employment for Equity Good Reason unless the Employee first delivers a written notice of termination to the Company identifying in reasonable detail the acts or omissions constituting Equity Good Reason within 90 days after their occurrence and the provision of this Agreement relied upon, such acts or omissions are not remedied by the Company within 30 days of the receipt of such notice, and the Employee actually ends her Employment on or prior to the last day of the period set forth in clause 3.1.

For the avoidance of doubt, the Company utilising its right to terminate the Employment pursuant to clause 3.2 (payment in lieu of notice), shall have no effect on the determination of whether the Employment has terminated for Equity Good Reason.

**“ Group Company ”**

means any firm, company, corporation or other organisation which is a holding company from time to time of the Company or any subsidiary from time to time of the Company or any such holding company (for which purpose the expressions 'holding company' and 'subsidiary' shall have the meanings given to them by Section 1159 Companies Act 2006);

**“ Intellectual Property Rights ”**

means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“ Invention ”**

means any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium;

" PILON Benefit "	means either (at the Company's sole discretion) (i) the continued provision of the benefits to which the Employee would have been entitled during a relevant period of notice or remaining notice (car allowance, pension contributions, private medical insurance and life assurance cover but no bonus or other benefits) or (ii) an amount in lieu of the benefits that would have been provided to the Employee during a relevant period of notice or remaining period of notice if she had remained employed during such period, comprising car allowance, Company pension contributions, private medical insurance and life assurance cover (as determined by reference to the cost to the Company of the premiums it pays to provide such benefits to the Employee) but no bonus or other benefits. (In the case of (ii) less any benefits actually provided);
" Pre-Contractual Statement "	means any undertaking, promise, assurance, statement, representation or warranty (whether in writing or not) of any person relating to the Employment which is not expressly set out in this Agreement or any documents referred to in it;
" Parent "	means Intercept Pharmaceuticals, Inc. or any other Group Company which is the ultimate direct or indirect parent of the Company;
" Settlement Agreement "	means a settlement agreement in a form acceptable to the Company and to the Employee and substantially in the form set out in Schedule 1; and
" Severance Benefit "	means either (at the Company's sole discretion) (i) the continued provision of the benefits to which the Employee was entitled for a period of 12 months (comprising car allowance, Company pension contributions, private medical insurance and life assurance cover (but no bonus or other benefits)) or (ii) means an amount in lieu of 12 months of benefit provision, comprising car allowance, Company pension contributions private medical insurance and life assurance cover (as determined by reference to the cost to the Company of the premiums it pays to provide such benefit to the Employee), but no bonus or other benefits, less the value of any benefits provided to the Employee during any period of notice or the value of any PILON Benefit paid or to be paid or provided to the Employee;

" **Share Scheme** " shall have the meaning given to it in clause 9.1 below;

" **Trial Period End Date** " means 31 December 2016.

1.2 References to clauses, sub clauses and schedules are, unless otherwise stated, references to clauses and sub clauses of and schedules to this Agreement.

1.3 The headings to the clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

1.4 References to persons shall include bodies corporate, unincorporated associations and partnerships.

1.5 Words and expressions defined in or for the purpose of the Companies Acts shall have the same meaning unless the context otherwise requires.

## **2 APPOINTMENT**

2.1 The Company shall employ the Employee and the Employee agrees to serve the Company as President of International and subject to the terms and conditions in this Agreement. The status, duties, authorities, responsibilities and reporting requirements of the President of International are set out in the job description found at Schedule 2.

2.2 It has been explained to the Employee and the Employee hereby understands and agrees that she will initially report to the Group CEO until the Trial Period End Date but that she will from such date report to the Group Chief Operating Officer who is proposed to be appointed in due course.

## **3 DURATION**

3.1 The Employment shall commence on 7 October 2016 (the "**Commencement Date** ") and, subject to clause 18, shall continue until:

3.1.1 terminated by the Employee giving to the Company in writing, 6 months' notice;

3.1.2 terminated by the Company giving to the Employee in writing, 6 months' notice.

3.2 The Company reserves the right to terminate the Employment with immediate effect at any time after the Commencement Date (including where the Employee has given notice to the Company) by giving notice in writing that it is doing so and confirming that it has paid or will pay the Employee in lieu of her period of notice or any remaining period of notice (whether given by the Company or by the Employee). The Employee shall have no entitlement to insist that the Company make such payment, which shall be made entirely at the Company's discretion. For the avoidance of doubt, any payment in lieu shall be in respect of Salary only and shall not include the value of any benefit, bonus, incentive, commission, or holiday entitlement which would have accrued to the Employee had she been employed until the expiry of her notice period.

- 3.3 If the Company elects to terminate the Employment by making a payment in lieu of notice, and it subsequently discovers misconduct by the Employee which would have entitled it to terminate the contract summarily, without making such a payment, the Company shall be entitled to:
- 3.3.1 withhold any such payment in lieu if it has not yet been received by the Employee and the Employee shall have no rights to recover such sum as a debt owing; or
  - 3.3.2 if such sum has been received by the Employee, at its absolute discretion, require the payment in lieu to be repaid (in part or in full). The Company may recover any payment due under this clause 3.3.2 from the Employee as a debt.

The Employee agrees that these repayment provisions are intended to be a genuine pre-estimate of loss which may be suffered by the Company and in no way constitutes a penalty.

- 3.4 The parties acknowledge that the Employee is a highly skilled/highly paid employee who is key to the business of the Company and that replacing the Employee at short notice will result in significant cost to the Company. If, therefore, the Employee resigns voluntarily in breach of clause 3.1.1 or if required to work her notice period by the Company leaves the Company without working the full notice period, the Company reserves the right to recover a sum equal in value to the net salary payable for the shortfall in the period of notice. The Company reserves the right to recover such sum from the Employee as a debt, including by deducting the sum from any final payment due to the Employee. The Employee agrees that this provision is intended to be a genuine pre-estimate of loss which may be suffered by the Company due to the Employee leaving at short notice and in no way constitutes a penalty.

- 3.5 The Company does not have a formal retirement age for employees.

- 3.6 For the purpose of the ERA the Employee's period of continuous employment began on 24 November 2014.

- 3.7 The Employee represents and warrants that, in entering into and performing her duties under this Agreement:

- 3.7.1 she is not subject to any restriction that might hinder or prevent her from performing any of her duties in full;
- 3.7.2 she will not be in breach of any other contract of employment or any other obligation to any third party; and
- 3.7.3 this Employment is and shall remain she sole and exclusive employment.

- 3.8 The Employee further warrants that she has no criminal convictions and has never been disqualified from being a company director.

- 3.9 In the event that, on or before the Trial Period End Date, the Employee gives notice to terminate her employment in accordance with clause 3.1.1:

- 3.9.1 The Company shall decide in its absolute discretion whether to require the Employee to work such notice or put her on garden leave under clause 19 until the Trial Period End Date. After the Trial Period End Date, the Company may decide in its absolute discretion to terminate her employment prior to the expiry of such notice and make a payment in lieu of the remaining period of notice under clause 3.2. If the Company decides to terminate the Employee's employment after the Trial Period End Date but prior to the expiry of such notice, the payment in lieu shall comprise the payment in respect of Salary (as provided under clause 3.2) and the applicable PILON Benefit;

- 3.9.2 subject to the Employee (or her estate or legal representative, if applicable) executing a Settlement Agreement within 60 days from the termination of the Employment and so long as no event giving rise to Equity Cause is found on or prior to the date on which the Employee's employment is terminated, such termination by the Employee shall be deemed to constitute termination by the Employee for Equity Good Reason for the purposes of clause 9.4 and clause 18.3, which shall apply in respect of such termination (subject to the terms of such clauses), provided that any payment to be made under clause 18.3 shall instead be comprised of a payment equal to: (a) the relevant amount of the Salary (as provided under clause 18.3 and, for the avoidance of doubt, less any Salary payment made by way of payment in lieu of notice and/or less any Salary paid in respect of any period during which the Employee was on garden leave (whether notice is given by the Employee or the Company)); plus (b) the applicable Severance Benefit;
- 3.9.3 subject to the Employee (or her estate or legal representative, if applicable) executing a Settlement Agreement within 60 days from the termination of the Employment, the Employee shall remain eligible for a discretionary bonus payment for the 2016 bonus year under the Company's discretionary bonus scheme referred to in clause 6.7 (subject to the terms of such scheme) provided that if the Employee is placed on garden leave or her employment terminates prior to the Trial Period End Date, any such bonus shall be reduced pro rata in proportion to the period of the bonus year during which the employee remained employed by the Company and during which she was not on garden leave. If the Employee's employment terminates after the Trial Period End Date, she shall also remain eligible for a discretionary bonus payment under the Company's discretionary bonus scheme for 2017 (if any), subject to the terms of such scheme and provided that any bonus payment will be reduced pro rata in proportion to the period of the 2017 bonus year during which the Employee remained employed by the Company. The discretionary bonus amount for 2017 will be determined based on the Employee's bonus target applicable at the time of notice. The discretionary bonus amount for 2016 will be determined based on the Employee having achieved 100% on target.
- 3.10 In the event that, on or before the Trial Period End Date, the Company gives notice to terminate the Employee's employment in accordance with clause 3.1.2 without Equity Cause and without the Employee having previously given notice to terminate her employment:
- 3.10.1 the Company shall put the Employee on garden leave under clause 19 until at least the Trial Period End Date. Until the Trial Period End Date she shall remain eligible to be vested (subject to the rules of the relevant scheme) any performance award RSA's she may be granted on or about the date of signature of this agreement as though she had not been placed on garden leave under clause 19. If, after the Trial Period End Date the Company decides to terminate the Employee's employment prior to the expiry of such notice and make a payment in lieu of the remaining period of notice under clause 3.2 the payment in lieu shall comprise the payment in respect of Salary (as provided under clause 3.2) and the applicable PILON Benefit;

- 3.10.2 subject to the Employee (or her estate or legal representative, if applicable) executing a Settlement Agreement within 60 days from the termination of the Employment, such termination by the Company shall be deemed to constitute termination by the Company without Equity Cause for the purposes of clause 9.4 and clause 18.3, which shall apply in respect of such termination (subject to the terms of such clauses), provided that any payment to be made under clause 18.3 shall instead be comprised of a payment equal to: (a) the relevant amount of Salary (as provided under clause 18.3 and, for the avoidance of doubt, less any payment made by way of payment in lieu of notice and/or less any Salary paid in respect of any period during which the Employee was on garden leave after the Trial Period End Date (whether notice is given by the Employee or the Company)); plus (b) the applicable Severance Benefit reduced pro-rata by the value of any benefits received by the Employee during any period when she was on garden leave after the Trial Period End Date;
- 3.10.3 subject to the Employee (or her estate or legal representative, if applicable) executing a Settlement Agreement within 60 days from the termination of the Employment, the Employee shall remain eligible for a discretionary bonus payment for the 2016 bonus year under the Company's discretionary bonus scheme referred to in clause 6.7 (subject to the rules of the scheme). If the Employee's employment terminates after the Trial Period End Date, she shall remain eligible for a discretionary bonus payment under the Company's discretionary bonus scheme for 2017 (if any), subject to the terms of such scheme and provided that any bonus payment will be reduced pro rata in proportion to the period of the 2017 bonus year during which the Employee remained employed by the Company. The discretionary bonus amount for 2017 will be determined based on the Employee's bonus target applicable at the time of notice. The discretionary bonus amount for 2016 will be determined based on the Employee having achieved 100% on target.

#### **4 SCOPE OF THE EMPLOYMENT**

##### **4.1 The Employee shall:**

- 4.1.1 devote the whole of her working time, attention, ability and skills to her duties;
- 4.1.2 faithfully and diligently perform such duties and exercise such powers consistent with her position as may from time to time be reasonably assigned to or vested in her by the Board of the Company or the Parent;
- 4.1.3 obey all reasonable and lawful directions of the Board of the Company or the Parent;
- 4.1.4 comply with all the Company's articles of association, rules, regulations, policies and procedures from time to time in force;

- 4.1.5 comply with the general duties of directors set out in sections 171-177 of the Companies Act 2006, as well as any other applicable common law or statutory duties owed by directors to their company;
  - 4.1.6 exercise her duties in compliance with the requirements of the Bribery Act 2010 and use all reasonable endeavours to assist the Company in preventing bribery from being conducted on its behalf in contravention of that Act;
  - 4.1.7 at all times act in the best interests of the Company and the Group Companies and use her best endeavours to promote and protect the interests of the Company, the Group Companies and their employees; and
  - 4.1.8 keep the Board of the Company and the Parent at all times promptly and fully informed (in writing if so requested) of her conduct of the business of the Company and any Group Company and provide such explanations in connection with such conduct as the Board may from time to time require.
- 4.2 Subject to clause 4.4 the Company reserves the right on reasonable notice to reasonably assign the Employee duties of a different nature for any period the Company considers necessary to meet the needs of the business either in addition to or instead of those referred to in clauses 2.1 and 4.1 above, it being understood that the Company will consult with the Employee before imposing any such change and that the Employee will not be assigned duties which she cannot reasonably perform or which are inconsistent with her position, seniority and status.
- 4.3 During any period of notice of termination (whether given by the Company or the Employee) but subject to the terms of this Agreement, the Company shall be at liberty to assign the Employee such other duties as the Company shall determine in its absolute discretion (it being understood that she will not be assigned duties which she cannot reasonably perform) and may appoint another person to carry out the Employee's former duties as required by the needs of the business.
- 4.4 The Employee shall not, without the prior consent of the Board of the Company or in compliance with policies previously approved by the Board:-
- 4.4.1 on behalf of the Company or any Group Company, incur any capital expenditure in excess of such sum as may be authorised from time to time;
  - 4.4.2 on behalf of the Company or any Group Company, enter into any commitment, contract or arrangement otherwise than in the normal course of business or outside the scope of her normal duties, or of an unusual, onerous or long term nature or engage or dismiss any person.
- 4.5 The Employee shall if and so long as the Company requires without further remuneration:
- 4.5.1 carry out her duties as instructed by the Company on behalf of any Group Company; and
  - 4.5.2 act (subject to Employee's prior agreement) as a director or officer of any Group Company.

- 4.6 The Employee confirms that she has disclosed to the Company all circumstances in respect of which there is, or there might be, a conflict or possible conflict of interest between the Company or any Group Company and the Employee and she agrees to disclose fully to the Company any such circumstances that might arise during the Employment. For the avoidance of doubt, this includes but is not limited to, disclosing to the Company any activity by a third party or the Employee herself which might reasonably be expected to harm the Company or a Group Company or its business or to destabilise its workforce.
- 4.7 If the Employee becomes aware of any wrongdoing or other conduct which might reasonably be regarded as not in the best interests of the Company or any Group Company by any Group Company employees (including her own wrongdoing or conduct) she shall promptly report this to the Head of Legal Affairs or if this is not appropriate in the circumstances to the Chief Executive Officer.

## **5 HOURS AND PLACE OF WORK**

- 5.1 The Employee shall be required to work such hours as are necessary for the proper performance of her duties.
- 5.2 The Employee agrees that in her capacity as President of International she may choose or determine the duration of her working time and that the working time limits set out in Part II of the Working Time Regulations 1998 do not apply to the Employment.
- 5.3 The Employee's principal place of work will be in the Company's offices at 2 Pancras Square, London N1C 4AG or any such place in England as the Company shall from time to time direct. The Employee will be given reasonable notice of any change in her place of work.
- 5.4 The Employee may be required to travel throughout the United Kingdom and overseas in the performance of her duties and this may, on occasions, necessitate the Employee working outside the UK for an aggregate period of more than one month in any calendar year. At the date of this Agreement it is not envisaged that the Employee shall be required to work outside of the UK for more than one month at any one time. During any such period the Employee will be paid her normal salary and benefits in sterling in the normal way unless otherwise agreed. The Company shall bear all liability for any further tax or similar statutory deductions, penalties, costs and interest the Employee is required to pay, in any jurisdiction, as a result of any overseas travel undertaken in the course of her duties, save that this shall not extend to any statutory deductions, penalties, costs and interest incurred solely as a result of the Employee's negligent failure.

## **6 REMUNERATION**

- 6.1 The Company shall pay to the Employee a basic salary at the rate of £300,000 per annum ("**Salary**"), payable by equal monthly instalments in arrears, normally on the last working day of each calendar month (the "**Salary Instalments**") by credit transfer to a bank account nominated by the Employee.
- 6.2 Upon giving not less than one month's notice, the Company reserves the right to change the intervals of the Salary Instalments as required by the needs of the Company to fortnightly instalments in arrears, normally on the 15<sup>th</sup> and last working day of each calendar month. The Company reserves the right to revert the Salary Instalments back to monthly instalments by providing the Employee with not less than one month's notice.

- 6.3 By signing this Agreement the Employee acknowledges and agrees to her Salary Instalments being changed in accordance with clause 6.2 as and when required by the needs of the Company.
- 6.4 The Company will review the Employee's salary annually. The Company shall not be obliged to make any increase.
- 6.5 The salary specified in clause 6.1 shall be inclusive of any fees to which the Employee may be entitled as a director of the Company or any Group Company.
- 6.6 The Company shall pay the Employee a car allowance of £14,160 per year, payable in equal monthly instalments in arrears, less deductions for tax and National Insurance.
- 6.7 The Employee shall be eligible to participate in the Company's discretionary bonus scheme with a potential discretionary bonus of up to 50% of the Employee's annual base salary each financial year of the Company strictly subject to the rules of such scheme as the Board or the Compensation Committee of the Company and/or any Parent from time to time may determine from time to time in force. Details of the bonus scheme will be communicated at the appropriate time. The Company reserves the right to discontinue the scheme or alter the terms of any bonus scheme provided at any time in line with what it considers to be business requirements. The bonus scheme is discretionary and there is no contractual entitlement to continue the scheme. Award of a bonus in one year shall not entitle the Employee to a bonus in subsequent years.
- 6.8 To the extent that the Parent is required pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop and implement a policy (the "Policy") providing for the recovery from the Employee of any payment of incentive-based compensation paid to the Employee that was based upon erroneous data contained in an accounting statement, this Agreement shall be deemed amended and the Policy incorporated herein by reference as of the date that the Parent takes all necessary corporate action to adopt the Policy, without requiring any further action of the Parent or the Employee, provided that any such Policy shall only be binding on the Employee if the same Policy applies to the other executive officers of the Group Companies as designated by the Parent Board from time to time.

## **7 PENSION AND OTHER BENEFITS**

- 7.1 The Company will comply with its employer pension duties under Part 1 of the Pensions Act 2008 from the date that it is legally required to do so. As a result, the Employee will be automatically enrolled into either a qualifying pension scheme or the National Employment Savings Trust ("NEST"), whichever the Company decides. If the Employee does not decide to opt-out of auto-enrolment, the Employee will be required to make pension contributions at the level set out in the relevant legislation and the Employee agrees to the Company deducting such contributions from their salary each month. Further information about pension choices will be provided at the appropriate time.
- 7.2 At the date of this Agreement it is not envisaged that the qualifying pension scheme will be a contracted out scheme for the purpose of the Pensions Schemes Act 1993 or that there will be a contracting out certificate in place in respect of the Employment.

- 7.3 The Employee shall be eligible to participate in the benefits schemes, which the Company (or its Parent from time to time) may maintain for the benefit of its senior employees from time to time in the UK (the “ **Schemes** ”) subject to the rules of the Schemes and the terms of any related policy of insurance from time to time in force. The Employee understands and agrees that she may not be eligible to participate in all non-UK entity benefit schemes due to the rules of such schemes and the terms of any related policy of insurance from time to time in force and that for those non-UK entity benefit schemes that she is eligible to participate in, she may only be able to participate in them to the extent that they can be properly, legally and reasonably be applied, administered and exercised in the UK. Further details of the Schemes and the benefits currently available to the Employee can be obtained from the Global Human Resources department of the Group Companies. This is for information only and should not be regarded as any guarantee of benefits, which may be paid under the Schemes in place from time to time.
- 7.4 The Company reserves the right, at its absolute discretion, to change the Schemes providers, to amend the terms of the Schemes (including but not limited to the level of benefits), to terminate the Schemes without replacement, to substitute other schemes for the Schemes and to remove the Employee from membership of the Schemes.
- 7.5 The Company shall be under no obligation to make any payment under the Schemes to the Employee unless and until it has received the relevant payment from the relevant Scheme provider(s). If any of the Schemes providers refuse for any reason (whether based on their own interpretation of the terms of the insurance policy or otherwise) to provide any benefits to the Employee, the Company shall not be liable to provide replacement benefits itself or any compensation in lieu and shall be under no obligation to pursue a claim for unpaid benefits on behalf of the Employee against the Schemes providers.
- 7.6 The Company reserves the right to terminate the Employee’s employment, where it has good cause to do so (including but not limited to where the Employee is incapacitated, redundant or has committed misconduct), notwithstanding that the Employee is receiving benefits under the Schemes and that such termination may result in those benefits being discontinued. The Employee agrees that she shall have no claim against the Company for damages in respect of the loss of benefits under the Schemes in such circumstances.
- 7.7 In the event that the Employee is absent by reason of ill-health she will continue to co-operate with and act in good faith towards the Company including but not limited to staying in regular contact with the Company and providing it with such information about their health, prognosis and progress as the Company may require.
- 7.8 In accordance with the Schemes rules from time to time participation in the Schemes may be subject to the condition that the Employee has notified the Company on or before the commencement of the Employment of any pre-existing medical conditions that she may have.

## **8 EXPENSES AND TRAVEL**

- 8.1 The Company shall reimburse the Employee in respect of all expenses reasonably incurred by her in the proper performance of her duties, subject to the Employee providing such receipts or other evidence that the Company may require. Subject to the Employee providing such receipts or other evidence that the Company may require, the Company shall also reimburse the Employee’s reasonable expenses of meals and lodging while staying in London from time to time and reasonable expenses for travelling to Heathrow or other major UK airports in the proper performance of her duties.

- 8.2 The Employee shall submit each expenses claim within 60 days of the later of:
- 8.2.1 incurring the expense; or
  - 8.2.2 receipt of the invoice for such expense.
- 8.3 The Company shall use its reasonable endeavours to reimburse expenses claims within 30 days of receiving an accurate and properly completed expenses claim accompanied by such receipts or other evidence that the Company may require.
- 8.4 The Employee shall at all times comply with the Company's Travel Policy and Expenses Policy from time to time in force. Copies are available from the Group Companies' intranet site or upon request from the Global Human Resources department of the Group Companies.
- 8.5 The Company shall pay the Employee's reasonable travel costs incurred in the proper performance of her duties in relation to her daily commute from her current home address as set out in this Agreement to the Company's offices located as anticipated in accordance with clause 5.3 to a maximum of £1,080 per month excluding any associated taxes and statutory deductions arising thereon (the "**Commuting Cap**"). The Employee will submit her expenses claim for such expenses with such receipts or other evidence that the Company may require in accordance with clause and in compliance Company's Travel Policy and Expenses Policy from time to time in force. Strictly subject to the Commuting Cap, on an annual basis, the Company shall also provide a gross up in respect of the income tax payable on (i) reimbursement payments made to Employee for commuting expenses set forth in this clause and (ii) any gross up amounts resulting therefrom.

## 9 SHARE OPTIONS

- 9.1 Subject always to the rules of the Intercept Pharmaceuticals, Inc. 2012 Equity Incentive Plan, as amended, or any other equity incentive plan that may then be in effect (collectively, the "**Equity Awards**") and any legal or regulatory restrictions from time to time in force, the Employee was granted the Options. The Employee may further, at the sole discretion of the Board or the Compensation Committee of the Parent, from time to time be granted additional options or other equity-based awards over shares of the common stock of the Parent.
- 9.2 If the Employee has been, prior to the date of this Agreement, or is at any time following the date of this Agreement, granted options or other equity-based awards pursuant to the Share Scheme or any other stock option or share incentive scheme of the Parent, those options or rights shall be subject to the rules of that scheme as in force from time to time which rules shall not form part of the Employee's service contract.

### **Effect of Termination of Share or Stock Options and other equity compensation**

- 9.3 In the event of Employee's termination by the Company for Equity Cause or by the Employee without Equity Good Reason all unvested stock options and other equity-based awards granted to the Employee before and after the date of this Agreement (including the Equity Awards) shall be immediately forfeited upon the effective date of such termination of employment or as otherwise provided in the award agreement; provided, and subject to clause 9.8, that the Employee shall have until the earlier of expiration date of the option or 90 days from the date of termination of the Employee to exercise all vested options unless the stock plan pursuant to which the option is granted requires earlier termination in connection with a liquidation or sale of the Parent or the Company.

- 9.4 In the event of the Employee's termination by the Employee for Equity Good Reason or by the Company without Equity Cause and provided that the Employee (or her legal representative, if applicable) executes a Settlement Agreement within a period of 60 days from the termination of Employment, that number of the Employee's time-based unvested stock options and other time-based equity awards granted to the Employee before or after the date of this Agreement (including the Options) that would otherwise have vested from the effective date of the Employee's termination up to and including the first anniversary of such date shall vest as of the date that the Settlement Agreement is executed by the Employee (or her estate or legal representative, if applicable) and the Employee (or her estate or legal representative, if applicable) shall have until the earlier of the expiration date of the option or one (1) year from the date of termination of the Employee's employment to exercise all vested options unless the stock plan pursuant to which the option is granted requires earlier termination in connection with a liquidation or sale of the Parent or the Company.
- 9.5 In the event the Employee's employment with the Company is terminated by the Employee for Equity Good Reason or by the Company without Equity Cause, in any such case, in anticipation of and/or within twelve (12) months following a Change in Control, in lieu of the acceleration provided for pursuant to clause 9.4 above, provided that the Employee (or her legal representative, if applicable) executes a Settlement Agreement within a period of 60 days from the termination of Employment, and subject to clause 9.8, to the extent vesting and acceleration will not result in violation of any applicable law, and subject to clause 9.8, all of the Employee's time-based unvested stock options and other time-based equity-based awards granted to the Employee before or after the date of this Agreement (including the Equity Awards) then in effect shall vest as of the date of the Settlement Agreement and the Employee shall have until the earlier of the expiration date of the option or one (1) year from the date of termination of the Employee's employment to exercise all vested options unless the stock plan pursuant to which the option is granted requires earlier termination in connection with a liquidation or sale of the Parent or the Company.
- 9.6 In the event the Employee's employment with the Company is terminated by reason of Incapacity pursuant to clause 18.2, all unvested stock and stock options granted to the Employee before and after the date of this Agreement shall be immediately forfeited upon the effective date of such termination of employment or as otherwise provided in the award agreement; provided that, and subject to clause 9.8 the Employee shall have until the earlier of the expiration date of the option or one (1) year from the date of termination of Employee's employment to exercise all vested options unless the stock plan pursuant to which the option is granted requires earlier termination in connection with a liquidation or sale of the Parent or the Company.
- 9.7 As used herein, "**Change in Control**" shall occur or be deemed to occur if any of the following events occur:
- 9.7.1 any sale, lease, exchange or other transfer (in one transaction or a series of transactions) of all or substantially all of the assets of the Parent and the Group Companies to a third person (with "person" as defined in clause 9.7.3); or

- 9.7.2 any consolidation or merger of the Parent or the Company where the shareholders of the Parent or the Company, as the case may be, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own, directly or indirectly, shares representing in the aggregate more than fifty percent (50%) of the combined voting power of all the outstanding securities of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any); or
- 9.7.3 a third person, including a “person” as defined in Section 13(d)(3) of the Securities Exchange Act of 1934 (a US Statute), as amended (the “**Exchange Act**”) (but other than (a) the Parent or another Group Company, (b) any employee benefit plan of the Parent or a Group Company, or (c) investors purchasing equity securities of the Parent pursuant to a financing or a series of financings approved by the board of directors of the Parent) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, of Controlling Securities (as defined below). “**Controlling Securities**” shall mean securities representing 25% or more of the total number of votes that may be cast for the election of the directors of the Parent or the Company, as the case may be.
- 9.7.4 Notwithstanding anything to the contrary herein, a Change in Control in respect of the Company shall not be deemed to have occurred under clause 9.7.2 or 9.7.3 if, immediately after the consummation of such transaction or series of transactions, (a) Employee is employed by the Parent, the Company or another Group Company on similar terms as this Agreement and (b) such transaction or series of transactions do not constitute a Change in Control in respect of Parent.

9.8 In the event that the Employee or the Company give notice to terminate the Employment and the Company puts the Employee on garden leave pursuant to clause 19 below, for the purposes of clauses 9.3, 9.4, 9.5 and 9.6 above, the Employee's employment shall be deemed to have been terminated with effect from the date on which the Employee is put on garden leave (as determined by the Company) and references to the effective date of termination of the Employee's employment or the termination of employment in such clauses shall be deemed to be the date on which the Employee is placed on garden leave (as determined by the Company). For the avoidance of doubt, this sub-clause shall only apply for the purposes of clauses 9.3 to 9.6 inclusive and for all other purposes the Employee's employment and the terms and conditions relating to it under this Agreement shall continue in effect until the expiry of the notice given by the Employee or the Company.

## **10 HOLIDAY**

- 10.1 The Employee shall be entitled to receive her normal remuneration for all bank and public holidays normally observed in England and a further 30 working days holiday in each holiday year, being the period from 1 January to 31 December. The Employee may only take her holiday at such times as are agreed with the person to whom she reports and in accordance with the Company's Vacation Policy from time to time in force.
- 10.2 In the holiday years in which the Employment commences or terminates, the Employee's entitlement to holiday shall accrue on a pro-rata basis for each complete month of service during the relevant year.

10.3 If, on the termination of the Employment, the Employee has exceeded her accrued holiday entitlement, the excess may be deducted from any sums due to her. If the Employee has any unused holiday entitlement, the Board may either require the Employee to take such unused holiday during any notice period or accept payment in lieu. Any payment in lieu shall only be made in respect of holiday accrued in accordance with clause 10.2 above during the Employee's final holiday year.

10.4 Holiday entitlement for one holiday year may not be taken in subsequent holiday years unless otherwise agreed by the Board. Failure to take holiday entitlement in the appropriate holiday year will lead to forfeiture of any accrued holiday not taken, without any right to payment in lieu.

## 11 INCAPACITY

11.1 Subject to the Employee's compliance with the Company's rules from time to time in force regarding sickness notification and doctor's certificates, details of which can be obtained from the Group Companies' intranet site or upon request from the Global Human Resources department of the Group Companies and subject to the Company's right to terminate the Employment for any reason including without limitation incapacity, if the Employee is at any time absent on medical grounds the Company shall pay to the Employee her normal basic salary for a maximum of 13 weeks for any one period of absence or absence in aggregate in any rolling period of 12 months (" **Company Sick Pay** ").

11.2 The Company reserves the right to reasonably require the Employee to undergo a medical examination by a doctor or consultant nominated by it, at anytime including at any stage of absence at the Company's expense, and the Employee agrees that she will undergo any requisite tests and examinations and will fully co-operate with the relevant medical practitioner and shall authorise him or her to disclose to and discuss with the Company the results of any examination and any matters which arise from it.

11.3 Payment of Company Sick Pay to the Employee pursuant to clause 11.1 shall be inclusive of any Statutory Sick Pay and any Social Security Sickness Benefit or other benefits to which the Employee may be entitled, whether or not claimed.

11.4 If the Employee's absence shall be caused by the actionable negligence of a third party in respect of which damages are recoverable, then all sums paid by the Company shall constitute loans to the Employee, who shall:

11.4.1 immediately notify the Company of all the relevant circumstances and of any claim, compromise, settlement or judgement made or awarded;

11.4.2 if the Board of the Company so requires, refund to the Company such sum as the Board may determine, not exceeding the lesser of:

a) the amount of damages recovered by her under such compromise, settlement or judgement; and

b) the sums advanced to her in respect of the period of incapacity.

11.5 Any actual or prospective entitlement to Company Sick Pay or private medical insurance or long term disability benefits shall not limit or prevent the Company from exercising its right to terminate the Employment in accordance with clauses 3.2 or 18 or otherwise and the Company shall not be liable for any loss arising from such termination.

- 11.6 If the Employee is prevented by incapacity from properly performing her duties under this Agreement for a consecutive period of 20 working days the Board may appoint another person or persons to perform those duties until such time as the Employee is able to resume fully the performance of her duties.

## **12 DEDUCTIONS**

For the purposes of the ERA, the Employee hereby authorises the Company to deduct from her remuneration any sums due from her to the Company or any Group Company including, without limitation, any overpayments of salary, employee's pension contributions, overpayments of holiday pay whether in respect of holiday taken in excess of that accrued during the holiday year or otherwise, loans or advances made to her by the Company, any fines incurred by the Employee and paid by the Company, the cost of repairing any damage or loss to the Company's property caused by her and all losses suffered by the Company as a result of any negligence or breach of duty by the Employee.

## **13 RESTRICTIONS ON OTHER ACTIVITIES BY THE EMPLOYEE**

- 13.1 During the Employment the Employee shall not directly or indirectly be employed, engaged, concerned or interested in any other company, business or undertaking without the prior written consent of the Board of the Parent or be involved in any activity which the Board of the Parent reasonably considers may be, or become, harmful to the interests of the Company or any Group Company or which might reasonably be considered to interfere with the performance of the Employee's duties under this Agreement provided that this clause 13.1 shall not prohibit the Employee:

- 13.1.1 subject to the prior written consent of the Board of the Parent, serving as an officer or member of the board of directors or advisory boards of non competing organisations from time to time;
- 13.1.2 serving as an officer or member of a charitable, educational or civic organisations;
- 13.1.3 engaging in charitable activities and community affairs; or
- 13.1.4 managing her personal investments or affairs including holding (directly or through nominees) of investments listed on any recognised stock exchange as long as not more than 5 per cent of the issued shares or other securities of any class of any one company shall be so held;

subject always to such activities not being or becoming, harmful to the interests of the Company or any Group Company or reasonably being considered to interfere with the performance of the Employee's duties and responsibilities under this Agreement.

- 13.2 Subject to any regulations issued by the Company, the Employee shall not be entitled to receive or obtain directly or indirectly any discount, rebate or commission in respect of any sale or purchase of goods effected or other business transacted (whether or not by her by or on behalf of the Company) and if she (or any firm or company in which she is interested) shall obtain any such discount, rebate or commission, she shall account to the Company for the amount received by her (or a due proportion of the amount received by such company or firm having regard to the extent of her interest in it). For the avoidance of doubt, nothing in this clause shall prevent the Employee from obtaining any discount, rebate or commission solely as a result of transactions legitimately entered into in her personal capacity.

## 14 CONFIDENTIALITY

- 14.1 The Employee shall neither during the Employment (except in the proper performance of her duties) nor at any time (without limit) after the termination of the Employment:
- 14.1.1 divulge or communicate to any person, company, business entity or other organisation;
  - 14.1.2 use for her own purposes for any purposes other than those of the Company or any Group Company; or
  - 14.1.3 through any failure to exercise due care and diligence, permit or cause any unauthorised disclosure of
- any Confidential Information provided that these restrictions shall cease to apply to any information, which shall become available to the public generally otherwise than through an unauthorised disclosure by the Employee or any other person.
- 14.2 For the purposes of this Agreement “ **Confidential Information** ” shall mean, in relation to the Company or any Group Company:
- 14.2.1 trade secrets;
  - 14.2.2 information relating to research activities, inventions, discoveries, secret processes, designs, know how, technical specifications and processes, formulae, intellectual property rights, computer software, product lines and any other technical information relating to the creation, production or supply of any past, present or future product or service;
  - 14.2.3 any inventions or improvements which the Employee may make or discover during the Employment;
  - 14.2.4 any information relating to the business or prospective business;
  - 14.2.5 details of suppliers, their services and their terms of business;
  - 14.2.6 details of customers and their requirements, the prices charged to them and their terms of business;
  - 14.2.7 pitching material, marketing plans and sales forecasts of any past, present or future products or services;
  - 14.2.8 information relating to the business, corporate plans, management systems, accounts, finances and other financial information, results and forecasts (save to the extent that these are included in published audited accounts);

- 14.2.9 proposals relating to the acquisition or disposal of a company or business or any part thereof;
- 14.2.10 proposals for expansion or contraction of activities, or any other proposals relating to the future;
- 14.2.11 details of employees and officers and of the remuneration and other benefits paid to them;
- 14.2.12 information given in confidence by clients, customers suppliers or any other person;
- 14.2.13 any other information which the Employee is notified is confidential; and
- 14.2.14 any other information which the Company (or relevant Group Company) could reasonably be expected to regard as confidential, whether or not such information is reduced to a tangible form or marked in writing as “confidential”, including but not limited to, information which is commercially sensitive,

which comes into the Employee’s possession by virtue of the Employment and which is not in the public domain and all information, which has been or may be derived or obtained from any such information.

14.3 The Employee acknowledges that all notes, memoranda, records, lists of customers and suppliers and employees, correspondence, documents, computer and other discs and tapes, data listings, databases, codes, designs and drawings and any other documents and material whatsoever (whether made or created by the Employee or otherwise) relating to the business of the Company and any Group Company (and any copies of the same) or which is created or stored on the Company’s equipment and systems:

14.3.1 shall be and remain the property of the Company or the relevant Group Company; and

14.3.2 shall be handed over by the Employee to the Company or the relevant Group Company on demand and in any event on the termination of the Employment and the Employee shall certify that all such property has been so handed over and that no copies or extracts have been retained.

14.4 For the avoidance of doubt, social media accounts, any on-line content and contacts operated or created by the Employee during the Employment for work related (including networking) purposes shall be regarded as the property of the Company and the Employee agrees not to use such social media after the termination of the Employment.

14.5 This clause 14 shall only bind the Employee to the extent allowed by law and nothing in this clause shall prevent the Employee from making a statutory disclosure.

## 15 DATA PROTECTION

The Employee consents to the Company and/or the Group Companies holding and processing, both electronically and manually, the data it collects in relation to the Employee in the course of the Employment (including, without limitation the Employee's employment application, references, bank details, appraisals, holiday and sickness records, salary reviews, remuneration details, employment benefits and other records which may include sensitive personal data relating to her health) for the purposes of the Company's and/or the Group Companies' administration and management of their employees and their businesses, the evaluation of assets and liabilities before any acquisition, merger or re-organisation of the Company and/or the Group Companies' business, to fulfil any obligation of the Company and/or the Group Companies to transfer records to any successor employer and for compliance with applicable procedures, laws and regulations. Such processing may involve the transfer, storage and processing by the Company and/or the Group Companies of such data outside the European Economic Area, to which the Employee consents.

## 16 INVENTIONS AND INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Employee acknowledges that all Employment IPRs, Employment Inventions and all materials embodying them shall automatically belong to the Company or relevant Group Company to the fullest extent permitted by law. To the extent that they do not vest in the Company or relevant Group Company automatically, the Employee holds them on trust for the Company or relevant Group Company.
- 16.2 The Employee acknowledges that, because of the nature of her duties, which includes research and development, including creating and developing Employment Inventions and Employment IPRs, and the particular responsibilities arising from the nature of her duties, she has, and shall have at all times while she is employed by the Company, a special obligation to further the interests of the Company and the Group Companies.
- 16.3 To the extent that legal title in any Employment IPRs or Employment Inventions does not vest in the Company or relevant Group Company by virtue of clause 16.1, the Employee agrees, immediately upon creation of such rights and inventions, to offer to the Company or relevant Group Company in writing a right of first refusal to acquire them on arm's length terms to be agreed between the parties. If the parties cannot agree on such terms within 30 days of the Company or relevant Group Company receiving the offer, the Company shall refer the dispute to an arbitrator who shall be nominated by CEDR. The arbitrator's decisions shall be final and binding on the parties, and the costs of arbitration shall be borne equally by the parties. The Employee agrees that the provisions of this clause 16.3 shall apply to all Employment IPRs and Employment Inventions offered to the Company under this clause 16.3 until such time as the Company has agreed in writing that the Employee may offer them for sale to a third party.
- 16.4 The Employee agrees:
- 16.4.1 to give the Company full written details of all Inventions which relate to or are capable of being used in the business of the Company and/or any Group Company promptly on their creation;
  - 16.4.2 at the Company's request and in any event on the termination of her employment to give to the Company all originals and copies of correspondence, documents, papers and records on all media which record or relate to any of the Employment IPRs;
  - 16.4.3 not to attempt to register any Employment IPR nor patent any Employment Invention unless requested to do so by the Company; and

- 16.4.4 to keep confidential each Employment Invention unless the Company has consented in writing to its disclosure by the Employee.
- 16.5 The Employee waives all her present and future moral rights which arise under the Copyright Designs and Patents Act 1988, and all similar rights in other jurisdictions relating to any copyright which forms part of the Employment IPRs, and agrees not to support, maintain nor permit any claim for infringement of moral rights in such copyright works.
- 16.6 The Employee acknowledges that, except as provided by law, no further remuneration or compensation other than that provided for in this Agreement is or may become due to the Employee in respect of her compliance with this clause 16.6. This is without prejudice to the Employee's rights under the Patents Act 1977.
- 16.7 The Employee undertakes to use her best endeavours to execute all documents and do all acts both during and after her employment by the Company as may, in the opinion of the Board of the Parent or the Company, be necessary or desirable to vest the Employment IPRs in the Company or relevant Group Company, to register them in the name of the Company or relevant Group Company and to protect and maintain the Employment IPRs and the Employment Inventions. Such documents may, at the Company's request, include waivers of all and any statutory moral rights relating to any copyright works which form part of the Employment IPRs. The Company agrees to reimburse the Employee's reasonable expenses of complying with this clause 16.7.
- 16.8 The Employee agrees to give all necessary assistance to the Company or relevant Group Company to enable it to enforce its Intellectual Property Rights against third parties, to defend claims for infringement of third party Intellectual Property Rights and to apply for registration of Intellectual Property Rights, where appropriate throughout the world, and for the full term of those rights.
- 16.9 The Employee hereby irrevocably appoints the Company to be her attorney to execute and do any such instrument or thing and generally to use her name for the purpose of giving the Company or its nominee the benefit of this clause 16. The Employee acknowledges in favour of a third party that a certificate in writing signed by any Director or the Secretary of the Company that any instrument or act falls within the authority conferred by this clause 16.9 shall be conclusive evidence that such is the case.

## **17 STATEMENTS**

- 17.1 The Employee shall not make, publish (in any format) or otherwise communicate any derogatory statements, whether in writing or otherwise, at any time either during her Employment or at any time after its termination in relation to the Company, any Group Company or any of their officers or other personnel.
- 17.2 The Company will use its reasonable endeavours to ensure that it does not allow or encourage its employees, officers and directors to make publish (in any format) or otherwise communicate any derogatory statements, whether in writing or otherwise, at any time during the Employment or at any time after its termination in relation to the Employee.
- 17.3 For the avoidance of doubt all statements to the press or other media communications in connection with the Company and/or any Group Company are dealt with by the Investor Relations Committee. The Employee shall not make any statements to the press or other media in connection with the Company and/or any Group Company at any time either during or after the Employment without the prior consent of the Chief Executive Officer of the Parent and/or the Investor Relations Committee.

## 18 TERMINATION OF EMPLOYMENT AND SEVERANCE

18.1 The Company may terminate the Employment immediately by notice in writing if the Employee shall have:

- 18.1.1 committed any serious breach of her obligations under this Agreement; or
- 18.1.2 committed any repeated or continued breach of her obligations under this Agreement after having received a written warning from the Company relating to the same; or
- 18.1.3 been guilty of conduct tending to bring her or the Company or any Group Company into disrepute; or
- 18.1.4 become bankrupt or had an interim order made against her under the Insolvency Act 1986 or compounded with her creditors generally; or
- 18.1.5 been disqualified from being a director by reason of any order made under the Companies Directors Disqualification Act 1986 or any other enactment; or
- 18.1.6 been convicted of an offence under any statutory enactment or regulation (other than a motoring offence for which no custodial sentence is given); or
- 18.1.7 failed to comply with the United Kingdom's Bribery Act 2010 or any other similar legislation, regulations or rules in any relevant jurisdiction related to, giving payments, gifts or entertainment to obtain a business advantage unlawfully, or adopted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Transactions; or
- 18.1.8 during the Employment, committed any gross breach of clauses 13, 14, 16 and/or 17.

Any delay by the Company in exercising such right of termination shall not constitute a waiver thereof.

18.2 In the event the Employee is incapacitated or prevented by illness or injury or accident or any other circumstances beyond her control (“**Incapacity**”) from discharging her duties for a total of 16 consecutive weeks, or 24 weeks in aggregate in any 12 consecutive calendar months, the Company may by notice in writing at any time during the period of Incapacity terminate the Employee's Employment by giving such notice as is required by section 86 of the Employment Rights Act 1996.

- 18.3 In the event of the termination of the Employee's employment by the Company without Equity Cause or by the Employee for Equity Good Reason, provided that the Employee (or her legal representative if applicable) executes a Settlement Agreement prior to the 60<sup>th</sup> day following the termination of the Employee's employment, the Company shall provide the Employee with a payment equal to: (a) 12 months of the Salary and either (at the Company's sole discretion) shall (i) continue to provide the benefits to which the Employee was entitled for a continued 12 month period (comprising car allowance, pension contributions, private medical insurance and life assurance cover but not bonus or other benefits) or (ii) make a payment of the value of the benefits the Employee is entitled to receive over a 12 month period (including car allowance, pension contributions, private medical insurance and life assurance cover) at the time of the termination of employment; (b) less any payment made by way of payment in lieu of notice (including PILON Benefit); and/or (c) less any Salary paid and/or benefits provided in respect of any period during which the Employee was on garden leave (whether notice is given by the Employee or the Company). Such payment shall be paid in equal monthly instalments according to the Company's payroll commencing on the first payroll date the Settlement Agreement is executed by the Employee (or her legal representative if applicable), save that in the event of such termination in anticipation of or within 12 months following a Change in Control, such payment shall be made in one lump sum payment within 30 days following the date the Settlement Agreement is executed by the Employee (or her legal representative if applicable). For the avoidance of doubt, (A) clause 9.4 and clause 9.5 are unaffected by this clause 18.3 and the acceleration provisions set out therein will apply in circumstances where the Employee has exercised her rights under this clause and (B) if clause 3.9 or 3.10 is applicable, clause 18.3 shall not be applicable except to the extent referenced specifically in clause 3.9 or 3.10.

## **19 GARDEN LEAVE**

During any period of notice of termination (whether given by the Company or the Employee), the Company shall be under no obligation to assign any duties to the Employee and shall be entitled to exclude her from its premises and those of any Group Company, and require the Employee not to contact any customers, suppliers or employees provided that this shall not affect the Employee's entitlement to receive her normal salary and contractual benefits. During any such period of exclusion the Employee will continue to be bound by all the provisions of this Agreement and shall at all times conduct herself with good faith towards the Company. In the event the Company exercises its right to place the Employee on garden leave for some or all of the notice period, the Company shall not, from the date it exercises such right, require the Employee to perform any duties or to be available during her normal working hours. Further the Company expressly permits the Employee to utilise her time looking for and attending interviews or meetings regarding any new employment or engagement which would start after her employment with the Company terminates subject always to this being in compliance with clause 5, 13, 14 and 21 of this Agreement.

## **20 DIRECTORSHIP**

- 20.1 On the termination of the Employment (however arising) or on either the Company or the Employee having served notice of such termination, the Employee shall should she hold any such offices:

- 20.1.1 at the request of the Company or any Group Company resign from all directorships and offices held by her in the Company or any Group Company and shall transfer without payment to the Company or as the Company may direct any nominee shares provided by it, provided however that such resignation shall be without prejudice to any claims which the Employee may have against the Company or any Group Company arising out of the termination of the Employment; and

20.1.2 immediately deliver to the Company or any Group Company as directed all materials within the scope of clause 14.3 and all credit cards, motor cars, car keys and other property of or relating to the business of the Company or of any Group Company which may be in her possession or under her power or control,

and if the Employee should fail to do so the Company is hereby irrevocably authorised to appoint another person to sign any documents and/or do any other things necessary on her behalf in order to give effect to the Employee's undertaking in this clause 20.1.

20.2 The appointment of the Employee as a director of the Company or any Group Company is not a term of this Agreement and the Company or any Group Company reserves the right to remove the Employee from any such directorship at any time and for any reason. Where the Company or any Group Company exercises this right, this shall not amount to a breach of this Agreement and shall not give rise to a claim for damages or compensation.

## 21 POST TERMINATION OBLIGATIONS OF THE EMPLOYEE

21.1 For the purposes of this clause 21 the following definitions apply:

21.1.1 “ **Restricted Business** ” means the businesses of the Company and Group Companies at the Termination Date with which the Employee was involved to a material extent during the twelve months immediately preceding the Termination Date;

21.1.2 “ **Restricted Customer** ” means any person, firm, company or other organisation who, at any time during the twelve months immediately preceding the Termination Date was a customer of or in the habit of dealing with the Company or any Group Company and with whom, during that period, the Employee had material dealings in the course of her employment or for whom the Employee was responsible on behalf of the Company or any Group Company;

21.1.3 “ **Prospective Customer** ” means any person, firm, company or other organisation with whom the Company or any Group Company had negotiations or discussions regarding a possible business relationship and/or had submitted a tender, taken part in a pitch or made a presentation to, or with which it was otherwise negotiating for the supply of goods and services during the six months immediately preceding the Termination Date and with whom, during that period, the Employee had material dealings in the course of her Employment or for whom the Employee was responsible for developing the relationship on behalf of the Company or any Group Company;

21.1.4 “ **Restricted Employee** ” means any person who, at the Termination Date, was an employee, officer or consultant of the Company or Group Company who could materially damage the interests of the Company or any Group Company if she becomes employed in any competing business and with whom the Employee worked closely or was responsible for in the twelve months immediately preceding the Termination Date;

- 21.1.5 “ **Restricted Supplier** ” means any person, firm, company or other organisation who, in the twelve months immediately preceding the Termination Date supplied goods and/or services to the Company or any Group Company including but not limited to any individual who provided services to the Company or any Group Company by way of a consultancy agreement (but excluding utilities or goods and services supplied for administrative purposes) and with whom, during that period, the Employee dealt to a material extent;
- 21.1.6 “ **Restricted Territory** ” means the United Kingdom and any other country in the world where the Company or any Group Company had business interests or dealings on the Termination Date;
- 21.1.7 “ **Restriction Date** ” means the earlier of the Termination Date and the start of any period of Garden Leave in accordance with clause 19;
- 21.1.8 “ **Termination Date** ” means the date of termination of the Employment (howsoever caused).
- 21.2 The Employee acknowledges that by reason of the Employment she will have access to trade secrets, confidential information, business connections and the workforce of the Company and the Group Companies and that in order to protect their legitimate business interests it is reasonable for her to enter into these post termination restrictive covenants and, having had the opportunity to seek independent legal advice the Employee agrees that the restrictions contained in this clause 21 (each of which constitutes an entirely separate, severable and independent restriction) are reasonable.
- 21.3 Reference in this clause 21.3 to the “Company” shall apply as though there were included reference to any relevant Group Company for whom or on whose behalf the Employee works during the course of the Employment. The Employee covenants with the Company for itself and as trustee and agent for each Group Company that she will not without the prior written consent of the Company:
- 21.3.1 for six months after the Restriction Date solicit or endeavour to entice away from the Company the business or custom of a Restricted Customer with a view to providing goods or services in competition with any Restricted Business;
- 21.3.2 for six months after the Restriction Date solicit or endeavour to entice away from the Company the business or custom of a Prospective Customer with a view to providing goods or services in competition with any Restricted Business;
- 21.3.3 for six months after the Restriction Date provide goods or services to, or otherwise have any business dealings with, any Restricted Customer in the course of any business concern which is in competition with any Restricted Business;
- 21.3.4 for six months after the Restriction Date provide goods or services to, or otherwise have any business dealings with, any Prospective Customer in the course of any business concern which is in competition with any Restricted Business;
- 21.3.5 for six months after the Restriction Date induce, solicit or otherwise endeavour to entice away from the Company any Restricted Employee;

- 21.3.6 for six months after the Restriction Date employ or engage or facilitate the employment or engagement of any Restricted Employee;
- 21.3.7 for six months after the Restriction Date interfere or endeavour to interfere with the supply of goods and/or services by any Restricted Supplier to the Company or any Group Company; and
- 21.3.8 for six months after the Restriction Date be engaged or concerned in any capacity in any business concern which is competition in the Restricted Territory with the Restricted Business.
- 21.4 For the avoidance of doubt, nothing in this clause 21 shall prevent the Employee from:
- 21.4.1 holding as an investment by way of shares or other securities not more than 5% of the total issued share capital of any company listed on a recognised stock exchange; or
  - 21.4.2 being engaged or concerned in any business concern where the Employee's work or duties relate solely to geographical areas where the business concern is not in competition with the Restricted Business; or
  - 21.4.3 being engaged or concerned in any business concern where the Employee's work or duties relate solely to services or activities of a kind with which the Employee was not concerned to a material extent in twelve months before the Termination Date.
- 21.5 The obligations undertaken by the Employee pursuant to this clause 21 extend to her acting not only on her own account but also on behalf of any other firm, company or other person and shall apply whether she acts directly or indirectly.
- 21.6 The Employee hereby undertakes with the Company that she will not at any time after the termination of the Employment in the course of carrying on any trade or business, claim, represent or otherwise indicate any present association with the Company or any Group Company or for the purpose of carrying on or retaining any business or custom, claim, represent or otherwise indicate any past association with the Company or any Group Company to its detriment.
- 21.7 While the restrictions in this clause 21 (on which the Employee has had the opportunity to take independent advice, as the Employee hereby acknowledges) are considered by the parties to be reasonable in all the circumstances, it is agreed that if any such restrictions, by themselves, or taken together, shall be found to go beyond what is reasonable in all the circumstances for the protection of the legitimate interests of the Company or any Group Company but would be considered reasonable if part or parts of the wording of such restrictions were deleted, the relevant restriction or restrictions shall apply with such deletion(s) as may be necessary to make it or them valid and effective.
- 21.8 If the Employee accepts alternative employment or engagement with any third party during the period of any of the restrictions in this clause 21 she will provide the third party with full details of these restrictions.

21.9 If the Employee's employment is transferred by reason of the Transfer of Undertakings (Protection of Employment) Regulations 2006 she will, if requested, enter into an agreement with the new employer that contains provisions no more onerous nor wider in scope than those provided by the Company under this clause 21.

21.10 If the Employee's contract of employment is expected to transfer to a new entity by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 but the Employee objects or otherwise resigns before any such transfer takes place, the Employee acknowledges that the Company may assign the benefit of these restrictive covenants to the relevant successor entity. Consequently, the Employee agrees that she will continue to observe the restrictions set out in this clause 21 for the benefit of any successor and will not regard herself as released from her obligations under this clause in the event of such assignment. The Employee agrees to co-operate with, and use her best endeavours to assist the Company and any successor in such circumstances including but not limited to providing such information, executing such documents and giving such assurances and undertakings as they may reasonably request.

## **22 WHISTLEBLOWING**

22.1 The Employee must at all times comply with the Company's or Parent's Code of Business Conduct from time to time in force. A copy is available from the Parent's public website and on the intranet site of the Group Companies.

22.2 If the Employee wishes to make a disclosure under Sections 43A-L of the ERA she should do so without delay by contacting the Parent's audit committee chairperson in writing, expressly stating that she wishes to make a qualifying disclosure. A 'qualifying disclosure' is defined for these purposes as a disclosure of information which, in the reasonable belief of the Employee, is made in the public interest and tends to show one or more of the following: a criminal offence, a risk to health and safety, a failure to comply with a legal obligation, a miscarriage of justice, environmental damage or concealment of any of these.

## **23 LEGAL COSTS**

23.1 The Company shall pay to the Employee's solicitors following receipt of an invoice addressed to the Employee but marked as payable by the Company the sum of up to £5,000 (inclusive of VAT) in respect of the Employee's legal expenses incurred only in connection with the taking of advice in relation to her rights and obligations under this Agreement.

## **24 AMALGAMATION AND RECONSTRUCTION**

24.1 If the Company is wound up for the purposes of reconstruction or amalgamation the Employee shall not as a result or by reason of any termination of the Employment or the redefinition of her duties within the Company or any Group Company arising or resulting from any reorganisation of the Group have any claim against the Company for damages for termination of the Employment or otherwise so long as she shall be offered employment with any concern or undertaking resulting from such reconstruction reorganisation or amalgamation on terms and conditions no less favourable to the Employee than the terms contained in this Agreement.

24.2 If the Employee shall at any time have been offered but shall have unreasonably refused or failed to agree to the transfer of this Agreement on no less favourable terms by way of novation to a company which has acquired or agreed to acquire the whole or substantially the whole of the undertaking and assets or not less than 50 per cent of the equity share capital of the Parent the Company may terminate the Employment by such notice as is required by s.86 of the ERA within one month of such offer being refused by the Employee.

**25 DISCIPLINARY AND GRIEVANCE PROCEDURES AND SUSPENSION**

- 25.1 The Company aims to follow applicable best practice in relation to any disciplinary matter or dismissal involving the Employee. However, such practice is not a contractual entitlement of the Employee and the Company reserve the right not to do so.
- 25.2 If the Employee wishes to obtain redress of any grievance relating to the Employment or is dissatisfied with any reprimand, suspension or other disciplinary step taken by the Company, she shall apply in writing to the head of the Group Companies' Global Human Resources department or the head of the Group Companies' Legal Department setting out the nature and details of any such grievance or dissatisfaction.
- 25.3 The Company reserves the right to suspend the Employee on full pay, for so long as it reasonably thinks fit, in order to:
- 25.3.1 investigate any allegations made against the Employee (whether in the context of the internal disciplinary process or otherwise);
  - 25.3.2 satisfy itself as to the Employee's fitness for work; and
  - 25.3.3 where it reasonably considers that it may be beneficial to temporarily remove the Employee.

**26 NOTICES**

- 26.1 Any notice or other document to be given under this Agreement shall be in writing and may be given personally to the Employee or to the Company's Legal Department (as the case may be) or may be sent by first class post or by facsimile transmission to, in the case of the Parent, its registered office for the time being (marked for the attention of the Legal Department) and in the case of the Employee either to her address shown on the face of this Agreement or to her last known place of residence.
- 26.2 Any such notice shall (unless contrary is proved) be deemed served when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours. In proving such service it shall be sufficient to prove, where appropriate, that the notice was addressed properly and posted or that the facsimile transmission was dispatched.

**27 COMMUNICATIONS**

Telephone calls made and received by the Employee using the Company's and/or the Group Companies' equipment and use of the Company's and/or the Group Companies' email system to send or receive personal correspondence may be recorded on their communication systems. Any recordings made shall at all times remain the property of the Company and/or the Group Companies and, if necessary, will be used as evidence in the case of disputes with employees or clients.

**28 ENTIRE AGREEMENT AND FORMER SERVICE AGREEMENT(S)**

- 28.1 This Agreement together with any documents referred to in it constitutes the entire agreement and understanding between the parties and the Employee agrees that she has not been induced to enter into the Employment by and has not relied upon any Pre-Contractual Statement.
- 28.2 This Agreement together with any documents referred to in it shall be in substitution for any previous letters of appointment, agreements or arrangements, (whether written, oral or implied), relating to the employment of the Employee, which shall be deemed to have been terminated by mutual consent. The Employee acknowledges that as at the date of this Agreement she has no outstanding claim of any kind against the Company and/ or any Group Company.
- 28.3 The parties do not intend the terms of this Agreement to be varied by implication due to any custom, practice, usage or course of dealings. No variation of this Agreement shall be effective unless agreed in writing by both parties.
- 28.4 There are no collective agreements affecting the Employee's employment.

**29 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and interpreted in accordance with English law and the parties irrevocably agree to the exclusive jurisdiction of the English Courts.

**30 REGULATORY CHANGES**

The Employee understands that the terms set out in this Agreement are subject always to any legal or regulatory requirements which may be introduced after the date of this Agreement, in particular in relation to restrictions on remuneration for directors and senior Employees. In the event that the Company is required to comply with such new obligations it may, at its absolute discretion, vary the relevant terms of this Agreement to the extent that it considers necessary to ensure compliance and the Employee agrees that they will have no claim for damages or compensation as a result.

**31 THIRD PARTY RIGHTS**

Save for any Group Companies the Employee and the Company do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Right of Third Parties) Act 1999 by any third party.

**32 GENERAL**

- 32.1 This Agreement constitutes the written statement of the terms of Employment of the Employee provided in compliance with part 1 of the ERA.
- 32.2 The expiration or termination of this Agreement, however arising, shall not operate to affect such of the provisions of this Agreement as are expressed to operate or have effect after that time and shall be without prejudice to any accrued rights or remedies of the parties.

- 32.3 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original and such counterparts or duplicates together shall constitute one and the same instrument.
- 32.4 The various provisions and sub-provisions of this Agreement are severable and if any provision or any identifiable part of any provision is held to be unenforceable by any court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remaining provisions or identifiable parts of them.

**Remainder of Page Intentionally Left Blank; Signature Page Follows**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

**THE COMPANY:**

**INTERCEPT PHARMA EUROPE LTD**

By:  /s/ Philip John Ashton

Name: Philip John Ashton

Title: VP, Head of Human Resources, EUCA

**EMPLOYEE:**

By:  /s/ Lisa Bright Morrison

Name: Lisa Bright Morrison

Address for Notice Purposes:

---

**SCHEDULE 1 - FORM OF SETTLEMENT AGREEMENT**

---

**WITHOUT PREJUDICE  
SUBJECT TO CONTRACT  
SETTLEMENT AGREEMENT**

Intercept Pharma Europe Limited

(1)

and

(2)

Lisa Bright Morrison

Ref: MS13/AM06  
Borges Salmon LLP  
[www.borges-salmon.com](http://www.borges-salmon.com)  
**Tel: +44 (0)117 307 6076**  
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## CONTENTS

Clause	Heading	Page
1	DEFINITIONS AND INTERPRETATION	2
2	TERMINATION OF EMPLOYMENT	4
3	PAYMENTS	5
4	REFERENCE	6
5	CONTINUING OBLIGATIONS	6
6	COMPANY PROPERTY	7
7	ASSISTANCE WITH PROCEEDINGS	8
8	SETTLEMENT	9
9	LEGAL ADVICE	12
10	LEGAL COSTS	12
11	WARRANTIES	12
12	ENTIRE AGREEMENT	13
13	COUNTERPARTS	14
14	SEVERABILITY	14
15	GOVERNING LAW AND JURISDICTION	14
16	VARIATION	14
17	THIRD PARTY RIGHTS	14
SCHEDULE 1 - Reference		15
SCHEDULE 2 - Certificate		16
SCHEDULE 3		17

**BETWEEN**

(1) Intercept Pharma Europe Ltd registered in England and Wales under company number 09224395 whose registered office is at One Glass Wharf, Bristol BS2 0ZX (the " **Company** ");

and

(2) Lisa Bright Morrison (the " **Employee** ").

**BACKGROUND**

(A) The Employee is employed as President of International by the Company.

(B) The Employee believes that she has or may have various claims against the Company or the Group arising out of the termination of her employment.

(C) The parties have agreed the terms of settlement of such claims, which are set out in this Agreement. The parties intend this Agreement to be an effective waiver of such claims, and to satisfy the conditions relating to settlement agreements in the Relevant Legislation.

(D) The Company is entering into this Agreement for itself and for all Group Companies and is authorised in that capacity.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words shall have the following meanings:

" **Group** " means the Company, the ultimate Holding Company of the Company and any Subsidiary of the Company or the ultimate Holding Company of the Company from time to time; and " **Group Company** " shall be construed accordingly;

" **Holding Company** " means a holding company (as defined by section 1159 of the Companies Act 2006) or a parent undertaking (as defined by section 1162 of the Companies Act 2006);

" **Relevant Legislation** " means:

- (a) the Employment Rights Act 1996, including without limitation its provisions relating to unfair dismissal, the right to a statement of employment particulars under Part I, unlawful deduction from wages or unlawful receipt of payments from the Employee under Part II, guarantee payments under Part III, protected disclosures under Part IVA, unlawful detriment under Part V, breach of the right to time off work under Part VI, remuneration or alternative work on suspension under Part VII, a redundancy payment under Part XI and Chapters II and V, and any other rights under the Employment Rights Act 1996; and

- (b) the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, including without limitation provisions relating to direct or indirect discrimination, disability-related discrimination, discrimination arising from disability, a failure to make reasonable adjustments, victimisation or harassment; and
- (c) the Equal Pay Act 1970, the Trade Union and Labour Relations (Consolidation) Act 1992, the Protection from Harassment Act 1997, the Data Protection Act 1998, the Working Time Regulations 1998, the National Minimum Wage Act 1998, the Human Rights Act 1998, the Employment Relations Act 1999, the Transnational Information and Consultation of Employees Regulations 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Information and Consultation of Employees Regulations 2004, the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, Companies (Cross-Border Mergers) Regulations 2007, the Pensions Act 2008, Employment Relations Act 1999 (Blacklists) Regulations 2010 and Agency Workers Regulations 2010.

" **Service Agreement** " means the service agreement between the Employee and the Company dated ● (as amended from time to time);

" **Subsidiary** " means a subsidiary (as defined by section 1159 of the Companies Act 2006) or a subsidiary undertaking (as defined by section 1162 of the Companies Act 2006).

1.2 In this Agreement, unless the context otherwise requires:

- (a) clause headings are inserted for convenience only and shall not affect the interpretation of this Agreement;
- (b) references to a clause or schedule is to a clause of or schedule to this Agreement;

- (c) any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement or such document;
- (d) the schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules;
- (e) a reference to a statute or statutory provision is a reference to it as amended, modified, consolidated or re-enacted from time to time;
- (f) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (g) unless the context otherwise requires, a reference to one gender shall include a reference to the other gender;
- (h) a reference to any party shall include that party's successors and permitted assigns;
- (i) "includes" or "including" means includes or including without limitation;
- (j) reference to an individual holding a position in the Company or a Group Company means the holder of that position from time to time.

## **2 TERMINATION OF EMPLOYMENT**

- 2.1 The Employee's employment with the Company will terminate on [ *insert date* ] (the " **Termination Date** "). In the period between the date of this Agreement and the Termination Date the parties will comply with their respective obligations under the terms of the Service Agreement. The Employee shall resign all and any offices she holds for the Company or any Group Company on the date of this Agreement.
- 2.2 The Employer agrees that the termination of the Employee's employment is for [Equity Good Reason] or [without Equity cause] as defined by clause 1.1 of the Service Agreement and that the provisions of clause 9.4 of the Service Agreement shall apply.
- 2.3 On the date of this Agreement, the Company will issue a press release in the terms of the draft found at part 1 of Schedule 3 and an internal announcement in the terms of the draft found at part 2 of Schedule 3. It will deal with any resulting enquiries in a manner consistent with these. The Employee shall not make any public comment or issue a press release about the termination of her employment or office or the events giving rise to the same which is inconsistent with these announcements.

### 3 PAYMENTS

- 3.1 Subject to and conditional upon the Employee complying with the terms of this Agreement and the warranties given by the Employee in this Agreement being true and accurate, and without admission of liability, the Company shall pay the Employee within 30 days of the date of this Agreement or the Termination Date (whichever is the later) the [sum of/following sums:]
- (a) [£[ *insert relevant sum if payment in lieu of notice or balance of payment in lieu of notice is to be made* ] by way of payment in lieu of notice which will be subject to deductions for income tax and/or national insurance contributions;]
  - (b) £[ *insert sum equivalent to 12 months' basic salary and the value of any benefits which the Employee is entitled to, as at the date the agreement is entered into less any payment in lieu of notice or notice pay/benefits paid or to be paid* ] by way of payment of the severance payment to be made to the Employee pursuant to clause 18.3 of the Service Agreement (the " **Severance Payment** ") subject to deductions for income tax and/or national insurance contributions.
- 3.2 The Company may by written notice to the Employee prior to the date of this Agreement opt to continue to provide any employment benefit (excluding for the avoidance of doubt salary) for a period of 12 months from the Termination Date, in which case the value of any such benefit and, in the case of private medical insurance or life assurance cover, the amount of the premium applicable to the Employee) shall be excluded from any payment at clause 3.1(b).
- 3.3 The Company will deduct from the Severance Payment any outstanding sums which are owed by the Employee to the Company.
- 3.4 Any rights that the Employee may have under the Share Scheme (as defined in clause 9.1 in the Service Agreement) shall be governed by the rules of the relevant scheme, award agreement and clause 9 in the Service Agreement. Nothing in this Agreement shall compromise, effect or extinguish the rights the Employee has or may have under the Share Scheme or any rights, rights of action or claims the Employee has or may have in connection with her capacity as a shareholder of Intercept Pharmaceuticals, Inc (whether now or in the future).
- 3.5 The Company shall, subject to the rules of the applicable schemes, pay to the Employee the sum of [£ ] (less tax and NI) [pro-rata] in respect of her discretionary bonus for the 2016 bonus year and a [pro-rata] sum of [£ ] (less tax and NI) in respect of her discretionary bonus for the 2017 bonus year. [The amounts to be inserted will depend on the Termination Date and the exercise of the Company's discretion in the relevant year.]

3.6 The Company confirms that it shall pay the Employee within 30 days after the date of this Agreement or the Termination Date whichever is the later her accrued salary (to the extent it has not already been paid) and payment in lieu of any accrued holiday as at the Termination Date (as reasonably determined by the Company) subject to deductions for income tax and national insurance contributions. The Company further agrees to reimburse the Employee for any outstanding expenses, properly incurred in the course of employment in accordance with its usual expenses procedure prior to the Termination Date, provided that the Employee submits a final expenses claim (with such evidence of such expenses as the Company may reasonably require) within 14 days of the later of Termination Date or the date of this Agreement.

3.7 The Employee confirms that, save as expressly provided in this Agreement, the Company has paid her all contractual payments and that it has provided her with all contractual benefits accrued and owing to her as at the Termination Date. [ *To be deleted if the Employee is to remain employed after the date this is signed as the Employee cannot provide this confirmation* ]

#### **4 REFERENCE**

4.1 In response to a written request made to [ *insert position* ], currently [ *name* ], from a prospective employer, the Company shall provide a written reference for the Employee in the terms set out in Schedule 1 and any oral reference provided by the Company's HR team or by the directors or officers of the Company or any Group Company will be in no less favourable terms. If, following the Termination Date, the Company obtains information concerning the Employee which would have affected its decision to provide such a reference, it shall inform the Employee and may decline to give a reference.

#### **5 CONTINUING OBLIGATIONS**

5.1 The Employee undertakes not to make, publish or otherwise communicate, whether directly or indirectly, any disparaging or derogatory statement(s), whether in writing or otherwise, concerning the Company or any of its Group Companies or any of its or their officers or employees or former officers or employees.

5.2 The Company will use all reasonable endeavours to procure that its directors and the directors of any Group Company and its or their HR teams shall not make, publish or otherwise communicate any disparaging or derogatory statement(s), whether directly or indirectly and whether in writing or otherwise, concerning the Employee. The Company shall not and shall procure any Group Company shall not, as an organisation make, publish or otherwise communicate any derogatory or defamatory statement(s) about the Employee nor will it or they authorise its or their officers or employees to make such statements.

- 5.3 Subject to clause 2.3 above, the Company and the Employee agree that the Employee will keep, and the Company will use all reasonable endeavours to procure that its directors and the directors of any Group Company and its or their HR teams will keep, the circumstances surrounding the termination of the Employee's employment and the fact and contents of this Agreement strictly confidential and not to disclose, communicate or otherwise make public the same to anyone (save to their professional advisers or otherwise as may be required by law or the relevant tax, regulatory or listing authorities and, in the case of the Employee, to her spouse/civil partner/partner and, in the case of the Company, to a Group Company or its or their auditors and/or as may be required for the administration of this Agreement). The Employee agrees to use all reasonable endeavours to procure that her spouse/civil partner/partner keeps the fact and contents of this Agreement strictly confidential. In the event that the Employee's spouse/civil partner/partner and/or professional advisers engage in conduct that would breach this clause, such conduct shall constitute a breach of this clause just as if the Employee had engaged in such conduct.
- 5.4 The Employee acknowledges that the obligations contained in clauses 14 (confidentiality), 16 (intellectual property) and 21 (post termination restrictive covenants) of the Service Agreement, or the equivalent clauses in any subsequent contract of employment, will continue to apply after the Termination Date.
- 5.5 The Company agrees to continue to maintain, or procure any Group Company continues to maintain, directors and officers liability insurance ( "**D&O Cover**" ), which the Company confirms covers the Employee in her capacity as a director and officer of any Group Company, on the terms subsisting as at the date of this Agreement, for a period of up to 6 years from the date of the Employee's resignation as a director.
- 6 COMPANY PROPERTY**
- 6.1 The Employee warrants that, except for any item of property which she is expressly permitted to retain under this Agreement, all property and information belonging to the Company or any Group Company which is in her possession or under her control will be returned to the Company in good working order by the Termination Date and the Employee warrants that she has not taken or retained, and will not take or retain, any copies, extracts or notes of any documents, files or correspondence.

6.2 The Employee confirms that on or before the Termination Date she will inform the Company of all passwords used by her in relation to any computers belonging to the Company or any Group Company. The Employee further confirms that, having complied with clause 6.1, on or before the Termination Date any information relating to the business of the Company and/or any Group Company (and all matter derived from such information) that is or was stored on any computer, laptop, tablet, smartphone, USB device, MP3 player, floppy disk, zip drive or other storage media or otherwise in any electronic form outside of the premises of the Company and which is or was in the Employee's possession, custody or control will be irretrievably deleted and the Employee shall produce such evidence of having done so as the Company may require and/or shall allow the Company to inspect any such computer, laptop, tablet, smartphone or other device.

6.3 The Company agrees that in the event that there are any claims or allegations made against the Employee in relation to her acts or omissions as a director or officer of any Group Company it shall provide the Employee with reasonable access on reasonable notice to such documents, records, correspondence, files and other information (whether originals, copies or extracts and howsoever stored) belonging to the relevant Group Company as may be reasonably required to address such claims or allegations.

## **7 ASSISTANCE WITH PROCEEDINGS**

7.1 The Employee agrees to make herself available to provide assistance to and co-operate with the Company or any Group Company (or any other interested party) as reasonably required by the Company and/or Group Company in relation to any legal proceedings, claims, complaints, investigations or enquiries (whether internal or external) concerning events or matters in which the Employee was involved or of which the Employee has knowledge including (but not limited to):

- (a) co-operating with the Company, any Group Company or any other interested party (including any solicitors acting for the Company or any Group Company and any regulatory authority); and
- (b) providing information, agreeing to be interviewed, providing witness statements and/or attending as a witness on behalf of the Company or any Group Company at any hearing in relation to such proceedings or claims.

7.2 The assistance and co-operation shall be provided at such times and on such days as may be agreed between the parties acting reasonably towards each other and taking into account prior commitments of each party.

7.3 The Company will reimburse the Employee for any reasonable loss, including loss of earnings, and reasonable out of pocket expenses incurred by her in providing such assistance, subject to the Employee providing to the Company reasonable evidence of such loss or expenditure.

## 8 SETTLEMENT

- 8.1 Subject to clause 8.2 below, the arrangements set out in this Agreement are offered by the Company without admission of liability and are in full and final settlement of all or any claims, complaints or rights of action that the Employee has or may have against the Company or any Group Company (or any of its or their officers, employees or agents or former officers, employees or agents) arising directly or indirectly out of or in connection with the Employee's employment with the Company and its termination and whether arising under common law, contract, tort, statute or otherwise and whether arising in the United Kingdom, the United States of America or in any other country in the world and including (but not limited to) the claims identified at clause 8.3 and/or any claim under the Relevant Legislation or any claim under any directive or other legislation which is applicable or enforceable in the United Kingdom by virtue of the United Kingdom's membership of the European Union or any other claim in respect of which a conciliation officer is authorised to act.
- 8.2 The Company confirms that clause 8.1 does not include any claims to enforce this Agreement and/or any claims for latent personal injury (other than any claims for personal injury arising out of or in connection with any discrimination claim the Employee may have) and/or any claims for accrued pension rights which the Employee is not, and could not reasonably be, aware of as at the date of this Agreement and/or any claims excluded under clause 3.4 above. The Employee warrants that she is not aware of any facts or circumstances which may give rise to a claim for personal injury and/or accrued pension rights at the date of this Agreement.
- 8.3 The particular claims, complaints or rights of action that the Employee has or may have against the Company or any Group Company (or any of its or their officers, employees or agents or former officers, employees or agents) and which the parties wish to settle by way of this Agreement relate to claims of or for unlawful deductions from wages, breach of contract (including but not limited to any claim for a bonus or incentive payment), holiday pay, wrongful dismissal, unfair dismissal (including any automatic unfair dismissal), any claims for redundancy payments (statutory or otherwise) and any unlawful discrimination because of or relating to race, sex, disability, age, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief and sexual orientation.
- 8.4 The Employee warrants that:
- (a) she has received independent legal advice from ● of ● (the " Adviser "); and
  - (b) she has instructed the Adviser to advise on whether the Employee has or may have any claims, including statutory claims, against the Company or any Group Company (or any of its or their officers, employees or agents or former officers, employees or agents) arising directly or indirectly out of or in connection with her employment with the Company, or its termination; and

- (c) she has provided the Adviser with all available information which the Adviser requires or may require in order to advise her whether she has any such claims; and
- (d) she has not issued or given instructions to any person to issue proceedings against the Company or any Group Company of a kind set out in clause 8.1 and undertakes that neither she nor anyone acting on her behalf will issue such claim; and
- (e) she is not aware of any facts or circumstances which might give rise to a claim against the Company or any Group Company (or any of its or their officers, employees or agents) other than those identified at clause 8.3.

8.5 The Employee understands and agrees that clause 8.1 is intended to have effect irrespective of whether or not she is or could be aware of such claims or have such claims in her express contemplation.

8.6 This Agreement satisfies the conditions regulating settlement agreements and compromise agreements contained in section 77(4A) of the Sex Discrimination Act 1975, section 72(4A) of the Race Relations Act 1976, section 288(2B) of the Trade Union and Labour Relations (Consolidation) Act 1992, paragraph 2(2) of Schedule 3A to the Disability Discrimination Act 1995, section 203(3) of the Employment Rights Act 1996, regulation 35(3) of the Working Time Regulations 1998, section 49(4) of the National Minimum Wage Act 1998, regulation 41(4) of the Transnational Information and Consultation of Employees Regulations 1999, regulation 9 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, regulation 10 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, paragraph 2(2) of Schedule 4 to the Employment Equality (Sexual Orientation) Regulations 2003, paragraph 2(2) of Schedule 4 to the Employment Equality (Religion or Belief) Regulations 2003, regulation 40(4) of the Information and Consultation of Employees Regulations 2004, paragraph 2(2) of Schedule 5 to the Employment Equality (Age) Regulations 2006, paragraph 13 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, section 58 of the Pensions Act 2008 and section 147(3) of the Equality Act 2010.

8.7 The Company has entered into this Agreement in reliance upon the Employee's agreement to clause 8.1, the warranties given in clauses 8.1, 8.4 and clause 11.1 being true and accurate and the Employee's agreement to the obligations continued at clause 5 (continuing obligations) of this Agreement. The Employee acknowledges that the Company has acted in reliance on such warranties and such agreement and agrees that, if she breaches such terms or agreement or any of such warranties are not true and accurate, without prejudice to any other rights or remedies of the Company or Group Company arising from such action, the Company:

- (a) may terminate this Agreement with immediate effect;
- (b) will have no obligation to make any payment of any sums due but not already paid under the terms of this Agreement; and
- (c) will be entitled to demand immediate repayment as a debt of all or any part of any sums already paid or benefits already provided under the terms of this Agreement

and any delay by the Company in exercising its rights under this clause shall not constitute a waiver of those rights.

8.8 The Employee agrees, without prejudice to any other rights or remedies of the Company or any Group Company arising from such action, that if she institutes or continues any proceedings against the Company or any Group Company (or any of its or their officers, employees or agents or former officers, employees or agents) of a kind referred to in clause 8.1 and, if an award is made to the Employee in respect of such proceedings, she shall repay to the Company immediately upon demand the lesser of:

- (a) the Severance Payment after such deductions of tax and national insurance as were made by the Company at source (in accordance with clause 3.1); or
- (b) such amount of the Severance Payment as is equivalent to the total amount of the compensation or damages (including interest) awarded, together with the full amount of any legal fees incurred by the Company in defending such proceedings.

Any part of the Severance Payment which remains outstanding shall cease to be payable under this Agreement with effect from the date of commencement of such proceedings.

8.9 The Employee agrees that she will not submit any grievances to the Company or any Group Company arising directly or indirectly out of or in connection with the Employee's employment with the Company, its termination or otherwise and she will not make a subject access request under the Data Protection Act 1998 to the Company or any Group Company. The Employee agrees not to pursue any grievance or appeal which may have been raised by her and/or any subject access requests outstanding at the date of this Agreement and all such grievances, appeal and/or requests shall be deemed to have been withdrawn by the Employee as at the date of this Agreement.

8.10 The parties acknowledge that nothing in this Agreement shall prevent the Employee from making protected disclosures within the meaning of Section 43A of the Employment Rights Act 1996.

## **9 LEGAL ADVICE**

9.1 The Employee has received independent legal advice from the Adviser, who is a relevant independent adviser for the purposes of the legislation referred to in clause 8.6, as to the terms and effect of this Agreement and in particular its effect on her ability to pursue her rights, if any, before an Employment Tribunal. The Employee has been advised by the Adviser that there is in force and was in force at the time the Employee received the advice referred to above, a contract of insurance or an indemnity provided by a professional body covering the risk of a claim by the Employee in respect of loss arising in consequence of that advice.

9.2 The Employee shall procure that the Adviser shall sign and date a certificate in the form found at Schedule 2.

## **10 LEGAL COSTS**

10.1 The Company shall pay to the Employee's solicitors within 28 days, following its receipt of an invoice addressed to the Employee but marked payable by the Company, the sum of up to £500 plus VAT in respect of the Employee's legal expenses incurred only in connection with the taking of advice in relation to the termination of her employment and this Agreement.

## **11 WARRANTIES**

11.1 The Employee warrants to the Company that:

- (a) she has not become employed or been engaged to provide services or received any offer of employment or any other engagement or work (including consultancy work) and she is not in negotiations concerning any such employment or engagement;
- (b) she is not aware of any acts or omissions whether by her or by any director, employee or agent of the Company or any Group Company which infringes or is likely to infringe any of the Company's or any Group Company's compliance policies and procedures or which contravenes or is likely to contravene any applicable law or regulation or which, if disclosed to the Company, would entitle or have entitled the Company to terminate the Employee's employment summarily;

- (c) she has not downloaded and will not download any information from the Company's or any Group Company's IT or email system onto any personal device (including but not limited to personal computers, laptops, tablets, smartphones, USB devices, MP3 players, floppy disks, zip drives or similar devices) and she has not and will not forward information belonging to the Company or any Group Company to any personal email account(s); and
  - (d) she will, on or before 5.00pm on the Termination Date, delete any work-related connection between her and any existing or prospective clients of the Company or any Group Company from Facebook, LinkedIn or any other social or professional networking sites or equivalent save those that were connections of the Employee prior to the commencement of her employment with the Company.
- 11.2 [The Company warrants there are no circumstances of which it or any Group Company is aware or ought reasonably to be aware which would entitle the Company to bring any claim against the Employee or which would entitle it to terminate her employment for Equity Cause (as defined by clause 1.1 of the Service Agreement) and that the Company does not believe there is any claim against the Employee.] [ *to be agreed by the Company on termination if applicable* ]
- 12 ENTIRE AGREEMENT**
- 12.1 In relation to its subject matter, this Agreement and the documents to which it refers set out the entire agreement between the parties in respect of the Employee's employment and its termination and supersedes all prior agreements, arrangements, promises, assurances, warranties, representations and understandings between them, whether written or oral.
- 12.2 The Employee agrees that she has not entered into this Agreement in reliance upon any statement, representation, assurance or warranty (whether made innocently or negligently) which is not set out in this Agreement.
- 12.3 This Agreement although marked "without prejudice" and "subject to contract" will, upon signature by all parties, be treated as an open document evidencing an agreement binding on the parties.
- 12.4 Nothing in this clause shall limit or exclude liability for fraud.

**13 COUNTERPARTS**

13.1 This Agreement may be signed in any number of counterparts and this has the same effect as if the signatures on counterparts were on a single copy of this Agreement. Each counterpart, when executed, shall constitute an original of this Agreement, but all the executed counterparts shall together constitute a single instrument.

**14 SEVERABILITY**

14.1 If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, but that shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**15 GOVERNING LAW AND JURISDICTION**

15.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts in relation to any dispute or claim arising out of or in connection with it.

**16 VARIATION**

16.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17 THIRD PARTY RIGHTS**

17.1 For the purposes of section 1(2) of the Contracts (Rights of Third Parties) Act 1999, the parties state that they do not intend any term of this Agreement to be enforced by a third party except any Group Company and any officer or employee of the Company or any Group Company may enforce any right conferred on it or him/her in this Agreement and the parties agree that they may amend or vary or terminate all or any part of this Agreement without the consent of any Group Company and any other relevant party.

**Schedule 1**

**Reference**

*[ Reference to be agreed or in the absence of agreement to be factual only confirming name, dates of employment and job title on termination ]*

Whilst the above information is given in confidence and good faith, no responsibility or liability can be accepted by the Company or any of its employees for any omissions or inconsistencies in the information or for any loss or damage that may result from reliance being placed on it. The information is given in confidence and only for the purposes for which it was requested and should not be disclosed to a third party.

**Schedule 2**

**Certificate**

I, Andrew Secker of Mills & Reeve LLP confirm that I have given relevant independent advice to Lisa Morrison as to the terms and effect of the agreement between Intercept Pharma Europe Limited, and Lisa Morrison and in particular its effect on her ability to pursue her rights before an Employment Tribunal.

I confirm that:

- 1 I am a solicitor of the Senior Courts who holds a current practising certificate;
- 2 I am not prevented from acting as an independent adviser by section 203 ERA (as defined under the agreement) or any other relevant statutory provision;  
and
- 3 there is in force and there was at the time I gave the advice referred to cover under a contract of insurance or an indemnity provided for members of a profession or professional body covering the risk of a claim by Lisa Morrison in respect of loss arising in consequence of that advice.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**Schedule 3**

**SIGNED** for and on behalf of )

the Company )

**SIGNED** by )

Lisa Bright Morrison )

**SIGNED** by )

[ *Name of Adviser* ] )

(for the purposes of clause 9 only)

**Execution Version**

LEGACY YARDS TENANT LP,

**Landlord**

**TO**

INTERCEPT PHARMACEUTICALS, INC.,

**Tenant**

---

**Lease**

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**Dated as of December 7, 2016**

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1 PREMISES; TERM; USE</b>	<b>1</b>
1.01 Demise	1
1.02 Term	2
1.03 Possession Date	2
1.04 Use	2
<b>ARTICLE 2 RENT</b>	<b>5</b>
2.01 Rent	5
2.02 Fixed Rent	5
2.03 Additional Charges	5
2.04 PILOT Payments	5
2.05 Impositions	10
2.06 Tax Payments	12
2.07 Operating Payments	14
2.08 PILOT, Impositions, Tax and Operating Provisions	21
2.09 Electric Charges	22
2.10 Manner of Payment	23
2.11 Security	23
<b>ARTICLE 3 LANDLORD COVENANTS</b>	<b>24</b>
3.01 Landlord Services	24
3.02 General Service Provisions	29
3.03 Landlord's Contribution	30
3.04 Governmental Incentives	33
<b>ARTICLE 4 LEASEHOLD IMPROVEMENTS; TENANT COVENANTS</b>	<b>33</b>
4.01 Initial Improvements	33
4.02 Alterations	38
4.03 Landlord's and Tenant's Property	42
4.04 Access and Changes to Building	44
4.05 Repairs	46
4.06 Compliance with Laws; Hazardous Materials	47
4.07 Tenant Advertising	48
4.08 Right to Perform Tenant Covenants	48
4.09 Telecommunications; Shaft Space	49
<b>ARTICLE 5 ASSIGNMENT AND SUBLETTING</b>	<b>50</b>
5.01 Assignment; Etc	50
5.02 Landlord's Right of First Offer	51
5.03 Assignment and Subletting Procedures	55
5.04 General Provisions	56

5.05	Assignment and Sublease Profits	58
5.06	Eligible Subtenant; Non-Disturbance	59
5.07	Disputes	59
<b>ARTICLE 6 SUBORDINATION; DEFAULT; INDEMNITY</b>		<b>59</b>
6.01	Subordination	59
6.02	Estoppel Certificate	61
6.03	Default	61
6.04	Re-entry by Landlord	62
6.05	Damages	62
6.06	Other Remedies	63
6.07	Right to Injunction	63
6.08	Certain Waivers	63
6.09	No Waiver	64
6.10	Holding Over	64
6.11	Attorneys' Fees	65
6.12	Nonliability and Indemnification	65
<b>ARTICLE 7 INSURANCE; CASUALTY; CONDEMNATION</b>		<b>67</b>
7.01	Compliance with Insurance Standards	67
7.02	Tenant's Insurance	67
7.03	Subrogation Waiver	68
7.04	Condemnation	68
7.05	Casualty	70
7.06	Landlord's Insurance	72
<b>ARTICLE 8 MISCELLANEOUS PROVISIONS</b>		<b>72</b>
8.01	Notice	72
8.02	Rules and Regulations	74
8.03	Severability	74
8.04	Certain Definitions	74
8.05	Quiet Enjoyment	75
8.06	Limitation of Landlord's and Tenant's Personal Liability	75
8.07	Counterclaims	76
8.08	Survival	76
8.09	Certain Remedies; Arbitration	76
8.10	No Offer; Counterparts	78
8.11	Captions; Construction	78
8.12	Amendments	78
8.13	Broker	78
8.14	Merger	79
8.15	Successors	79
8.16	Applicable Law	79
8.17	No Development Rights	79
8.18	Condominium	79
8.19	Embargoed Person	80
8.20	Dining Facility; Wet Installations	80

8.21	Press Releases	82
8.22	Tenant Creditworthiness	82
8.23	Recording	83
8.24	REIT/UBTI Compliance	83
8.25	Time of the Essence	83

**ARTICLE 9 SIGNAGE** **83**

9.01	Premises Signage	83
9.02	Signage Removal	84
9.03	Building Directory	84

**EXHIBITS**

A	Description of Land
B	Floor Plans
C	Rules and Regulations
D	Standard Cleaning Specifications
E-1	Delivery Condition
E-2	Post Delivery Condition
F	HVAC Specifications
G	Elevator Specifications
H	Charges for Landlord Services and Personnel
I-1	Tenant Design Standards
I-2	Construction Rules
J	Insurance Minimum Coverage and Limits
K	Approved Contractors
L	Security Specifications
M	Intentionally Omitted
N	Form of Confidentiality Agreement
O	Form of Letter of Credit
P	LEED-Related Requirements For Alterations
Q	Intentionally Omitted
R	Intentionally Omitted
S	Form of Landlord's Non-Disturbance Agreement
T	Intentionally Omitted

## INDEX OF DEFINED TERMS

Definition	Where Defined
37 th Floor Expiration Date	Section 1.02
37 th Floor Premises	Section 1.01
40 th Floor Expiration Date	Section 1.02
40 th Floor Premises	Section 1.01
55 HY Lease	Section 1.02
Acceptance Notice	Section 11.01
Additional Charges	Section 2.03
Additional Tax Amount	Section 2.04
Additional Tax Payment	Section 2.04
Affiliate	Section 5.01
Alterations	Section 4.02
Annual Administrative Fee	Section 2.04
Applicable Percentage	Section 6.10
Arbiter	Section 2.07
Assignment Consideration	Section 5.05
ATMs	Section 1.04
Base Building Work	Section 2.07
Base Impositions Amount	Section 2.05
Base Operating Amount	Section 2.07
Base Operating Year	Section 2.07
Base PILOT Amount	Section 2.04
Base PILOT Year	Section 2.04
Basic Electric Charge	Section 2.04
Broker	Section 8.13
Building	Recitals
Business Days	Section 3.02
Business Hours	Section 3.02
Casualty	Section 7.05
Cessation Date	Section 2.04
Commencement Date	Section 1.02
Control	Section 5.01
CPI	Section 8.04
Curing Party	Section 4.08
Customary Ancillary Uses	Section 1.04
Declaration	Section 8.18
Decorative Alterations	Section 4.02
Delivery Condition	Section 4.01
Desk Space User	Section 5.01
Dining Facility	Section 1.04
Effective Date	Introduction
Effective Period	Section 2.04
Elevators	Section 3.01

Eligible Sublease	Section 5.06
Eligible Subtenant	Section 5.06
Embargoed Person	Section 8.19
Event of Default	Section 2.04
Expiration Date	Section 1.02
First Class Office Building	Section 1.04
Fixed Rent	Section 2.02
Fixtures	Section 4.03
Fourth Reduction Date	Section 2.11
GAAP	Section 2.07
General Conditions	Section 4.01
Hazardous Materials	Section 4.06
Holidays	Section 3.02
IDA	Section 2.04
Impositions	Section 2.05
Impositions Payment	Section 2.05
Intercept Tenant	Section 4.02
Interest Rate	Section 4.08
Internal Stairs	Section 3.01
JAMS Arbitrator	Section 8.09
Land	Recitals
Landlord	Introduction
Landlord Indemnified Party	Section 6.12
Landlord Services	Section 3.01
Landlord's Non-Disturbance Agreement	Section 5.06
Landlord's Post Turnover Work	Section 4.01
Landlord's Rate	Section 2.09
Landlord's Statement	Section 2.07
Landlord's Turnover Work	Section 4.01
Landlord's Work	Section 4.01
Latent Defects	Section 4.01
Laws	Section 4.06
LC Date	Section 2.11
Letter of Credit	Section 2.11
Messenger Center	Section 3.01
Messenger Center Services	Section 3.01
Minimum Retainage	Section 3.03
NAM	Section 8.09
Net Effective Rental	Section 5.02
Net Present Rent Value	Section 5.02
New Tenant	Section 6.10
Non-Material Alteration	Section 4.02
Non-Material Alteration Cap	Section 4.02
Notice	Section 8.01
Operating Expenses	Section 2.07
Operating Payment	Section 2.07

Operating Year	Section 2.07
Other Sublease Considerations	Section 5.05
Outside Requisition Date	Section 3.03
Permitted Users	Section 1.04
PILOT	Section 2.04
PILOT Agreement	Section 2.04
PILOT Amount	Section 2.04
PILOT Cessation Date	Section 2.04
PILOT Payment	Section 2.04
Post Delivery Condition	Section 4.01
Premises	Section 1.01
Project	Recitals
Punch List Items	Section 4.01
Records	Section 2.07
Recurring Additional Charges	Section 2.03
REIT	Section 8.24
Rent	Section 2.01
Rent Commencement Date	Section 2.02
Requesting Party	Section 8.22
Required Letter of Credit Amount	Section 2.11
Reserved Tonnage	Section 3.01
Restoration Work	Section 4.03
Rules and Regulations	Section 8.02
Secure Area	Section 4.04
Service Provider	Section 8.24
SNDA	Section 6.01
Specialty Installations	Section 4.03
Subject to CPI Increases	Section 8.04
Substantial Completion; Substantially Complete	Section 4.01
Substantial Completion Notice	Section 4.01
Substantial Portion	Section 3.02
Successor Landlord	Section 6.01
Superior Lease	Section 6.01
Superior Lessor	Section 6.01
Superior Mortgage	Section 6.01
Superior Mortgagee	Section 6.01
Tax Payment	Section 2.06
Tax Year	Section 2.04
Taxes	Section 2.06
TCO	Section 1.04
Tenant	Introduction
Tenant Delay	Section 4.01
Tenant Indemnified Party	Section 6.12
Tenant Inspection Notice	Section 4.01
Tenant Requisition	Section 3.03
Tenant's Basic Cost	Section 5.05

Tenant's Offer Notice	Section 5.02
Tenant's Property	Section 4.03
Tenant's Share	Section 2.04
Tenant's Statement	Section 2.07
Tenant's Initial Work	Section 3.03
Term	Section 1.02
Transfer Notice	Section 5.03
Unavoidable Delay	Section 8.04
Untenantable	Section 3.02
Violations	Section 4.01
Walk-Through Date	Section 4.01
Warranty Period	Section 4.01
Work Reimbursement Period	Section 3.03
Work Allowance	Section 3.03

**LEASE** , dated as of December 7, 2016 (the “ **Effective Date** ”), between **LEGACY YARDS TENANT LP** (“ **Landlord** ”), a Delaware limited partnership whose address is c/o Related Companies, 60 Columbus Circle, New York, New York 10023 and **INTERCEPT PHARMACEUTICALS, INC.** (“ **Tenant** ”), a Delaware corporation whose address is 450 W 15th Street, Suite 505, New York, New York 10011.

**WITNESSETH :**

WHEREAS, Landlord is willing to lease to Tenant and Tenant is willing to hire from Landlord, on the terms hereinafter set forth, certain space in the building known as 10 Hudson Yards, New York, New York (the “ **Building** ”), which is located on the land described on **Exhibit A** (the “ **Land** ”, the Land and the Building and all plazas, sidewalks and curbs adjacent thereto are, collectively, the “ **Project** ”).

NOW, THEREFORE, Landlord and Tenant agree as follows:

**ARTICLE 1**

**Premises; Term; Use**

**1.01 Demise.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord, subject to the terms and conditions of this Lease, the entire 37<sup>th</sup> floor of the Building (the “ **37th Floor Premises** ”) and a portion of the 40th floor of the Building (the “ **40th Floor Premises** ”; the 40th Floor Premises and the 37th Floor Premises, collectively or individually, as the context requires, the “ **Premises** ”), in each case, substantially as shown hatched on the plans annexed as **Exhibit B**. Landlord and Tenant agree that the 37th Floor Premises shall be conclusively deemed to contain 33,607 rentable square feet, the 40th Floor Premises shall be conclusively deemed to contain 15,536 rentable square feet and, accordingly, the Premises shall be conclusively deemed to contain 49,143 rentable square feet in the aggregate. Subject to the other applicable provisions of this Lease, the leasing of the Premises by Tenant shall be deemed to include the non-exclusive right to use in common with others, for their intended uses, the common facilities in the Project designed and intended for use by tenants or other occupants in the Building in common with Landlord and other tenants of the Building, including, without limitation, elevators, fire stairs, mechanical areas serving the Premises (if any), and telephone and electrical closets and riser shafts serving the Premises (if any), and all walkways, loading docks, plazas, courts, public areas within the property line of the Building, service areas, lobbies, landscaped and garden areas and all other common and service areas and common amenities of the Building.

**1.02 Term.** This Lease shall be effective as of the Effective Date as a binding, enforceable agreement between Landlord and Tenant. The term of this Lease (the “Term”) shall commence on the date hereof (as hereinafter defined; such commencement date shall sometimes be referred to in this Lease as the “Commencement Date”) and shall end, unless sooner terminated as herein provided, (x) with respect to the 37th Floor Premises, on June 30, 2021 (the “37th Floor Expiration Date”) and (y) with respect to the 40th Floor Premises, on the earlier of (A) the date that is 285 days after the Possession Date under the 55 HY Lease (as hereinafter defined), (B) the date that Tenant completes Tenant’s Initial Work (as defined in the 55 HY Lease) under the 55 HY Lease, and legally occupies the Premises (as defined in the 55 HY Lease) for the conduct of Tenant’s business and (C) the 37th Floor Expiration Date (such earlier date, the “40th Floor Expiration Date”); the 37th Floor Expiration Date and the 40th Floor Expiration Date, collectively or individually, as the context requires, is called the “Expiration Date”). Notwithstanding the foregoing, the 40th Floor Expiration Date under clause (B) above shall be no earlier than the date that is 10 Business Days after Tenant delivers a written notice to Landlord specifying the date that Tenant has or shall complete Tenant’s Initial Work and occupy the Premises (as defined in the 55 HY Lease) for the conduct of Tenant’s business. “55 HY Lease” means that certain Lease dated as of the date hereof between One Hudson Yards Owner LLC and Tenant.

**1.03 Possession Date.** (a) As of the Effective Date, Tenant agrees that Landlord’s Turnover Work has been Substantially Completed and Tenant agrees to accept the Premises “As Is” in its condition and state of repair existing as of the date hereof, and understands and agrees that Landlord shall not be required to perform any work, supply any materials or incur any expense to prepare the Premises for Tenant’s occupancy, subject to Landlord’s completion of Landlord’s Post Turnover Work and any Punch-List Items with respect thereto, and subject further to Landlord’s obligation to correct any Latent Defects as more particularly described in Section 4.01(a)(iv). As of the Effective Date, Landlord has delivered the Premises to Tenant vacant, broom clean and free of all tenancies and free of Hazardous Materials and in compliance with applicable Laws. For purposes of clarification, it is intended that Substantial Completion of Landlord’s Post Turnover Work (or any portion thereof) shall occur after the Effective Date in accordance with Section 4.01.

(b) If for any reason Landlord shall be unable to deliver possession of the Premises to Tenant on any date specified in this Lease for such delivery, Landlord shall have no liability to Tenant therefor and the validity of this Lease shall not be impaired, nor shall the Term be extended, by reason thereof. This Section 1.03 shall be an express provision to the contrary for purposes of Section 223-a of the New York Real Property Law and any other law of like import now or hereafter in effect.

**1.04 Use.** (a) Subject to compliance with Laws, the Premises shall be used and occupied by Tenant (and any permitted subtenants and Desk Space Users) solely for executive, administrative and general office use and Customary Ancillary Uses in connection therewith as shall be reasonably required by Tenant in the operation of its business, in each case, consistent with the standards and character of a first-class office building located in midtown Manhattan of comparable size, quality and character to the Building (“First Class Office Building”), only, and for no other purpose. For purposes of this Lease, “Customary Ancillary Uses” shall mean the following ancillary uses; provided, that such Customary Ancillary Uses are (x) ancillary to the primary use of the Premises for executive, administrative and general offices, (y) primarily for the use of Tenant’s employees, business invitees and other persons expressly entitled to use the Premises pursuant to the terms of this Lease (collectively, “Permitted Users”) and for the use of operations within the Building and (z) permitted in accordance with all Laws (it being acknowledged that Landlord makes no representation that any of such ancillary uses are so permitted):

- Users;
- (i) training facilities and classrooms in connection with Tenant's training programs for the exclusive use of Permitted Users;
  - (ii) subject to the provisions of Section 8.20 hereof, cafeterias, dining facilities and pantries solely for (x) reheating food via microwave or similar food warming equipment, (y) serving prepared food and beverages delivered from vendors and (z) vending machines (each, a "Dining Facility"), in each case, for the exclusive use of Permitted Users (it being agreed that no cooking, involving an open flame or which will require venting to the exterior of the Building other than through the Building's general exhaust system may be done therein);
  - (iii) duplicating, reproduction and/or offset or other printing facilities (provided that Tenant shall cause such facilities to be constructed, operated and maintained so that no noise or vibration will emanate from the Premises to any other portions of the Buildings);
  - (iv) board rooms, conference rooms and meeting rooms for the exclusive use of Permitted Users;
  - (v) storage rooms;
  - (vi) shipping and mail rooms;
  - (vii) computer and data processing rooms;
  - (viii) a nursing station for the exclusive use of Permitted Users;
  - (ix) health and exercise facilities with showers for the exclusive use of Permitted Users (provided that (A) the entire floor on which any such exercise facility is located and the entire floor immediately below the floor on which such exercise facility is located shall be leased to Tenant, and (B) Tenant shall cause such exercise facility to be constructed, operated and maintained so that no noise or vibration (in each case, other than to a *de minimis* extent) will emanate from the Premises to other portions of the Building, it being agreed that if any other tenant or occupant complains to Landlord in good faith about such noise or vibration, then such noise or vibration shall be deemed to be emanating from the Premises to more than a *de minimis* extent);
  - (x) private showers and lavatory facilities for the exclusive use of Permitted Users;
  - (xi) a travel office for the exclusive use of Permitted Users; and
  - (xii) one or more automatic teller machines ("ATMs") for the exclusive use of Permitted Users (provided that Tenant agrees to maintain such ATMs with Landlord's preferred banking vendor at the Building if requested by Landlord and Tenant, at Tenant's sole cost and expense, shall (A) comply with all Laws with respect to the ownership, use, operation, maintenance and repair of the ATMs, (B) maintain and keep in full force and effect all licenses, permits and other approvals required with respect to the ownership, use, operation, maintenance and repair of the ATMs, (C) implement such measures as may be required by Laws, or which Landlord shall reasonably require, to secure the area in and around the ATMs and to otherwise ensure the safety and security of all persons using, operating, maintaining or repairing the ATMs and (D) obtain and keep in full force and effect such insurance as Landlord may reasonably require with respect to the ATMs and the operations thereof).

(b) Except to the extent expressly permitted pursuant to Section 1.04(a), in no event shall the Premises be used for any of the following: (a) a banking, trust company, or safe deposit business, in each case open for business to the general public, (b) a savings bank, a savings and loan association, or a loan company, in each case open for business to the general public, (c) the sale of travelers' checks and/or foreign exchange, in each case open for business to the general public, (d) a stock brokerage office whose business involves off-the-street retail sales to the general public, (e) a restaurant, bar or for the sale of food or beverages (except to the extent expressly permitted pursuant to Section 1.04(a)(ii)), (f) photographic reproductions and/or offset printing (other than such incidental printing as Tenant may perform in connection with the conduct of Tenant's usual business operations (and as otherwise expressly permitted pursuant to Section 1.04(a)(iii)), (g) an employment or travel agency (except to the extent expressly permitted pursuant to Section 1.04(a)(vii)), (h) a school or classroom (except to the extent expressly permitted pursuant to Section 1.04(a)(i)), (i) medical or psychiatric offices (except to the extent expressly permitted pursuant to Section 1.04(a)(viii)), (j) conduct of an auction, (k) gambling activities, (l) conduct of obscene, pornographic or similar disreputable activities, (m) offices of an agency, department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them, (n) offices of any charitable, religious, union or other not-for-profit organization, (o) offices of any tax exempt entity within the meaning of Section 168(h)(2) of the Internal Revenue Code of 1986, as amended, or any successor or substitute statute, or rule or regulation applicable thereto or (p) manufacturing. The Premises shall not be used for any purpose which would lower the first-class character of the Building, create unreasonable or excessive elevator or floor loads, impair or interfere with any of the Building operations or the proper and economic heating, ventilation, air-conditioning, cleaning or other servicing of the Building, constitute a public or private nuisance, or interfere with any other tenant or Landlord, or impair the appearance of the Building.

(c) The temporary certificate of occupancy for the Building core (the "TCO") permits (and any subsequent temporary or permanent base building certificate of occupancy obtained by Landlord will permit) the use of the Premises for offices. If Tenant requires an amendment to such certificate of occupancy of the Building to use the Premises for any of the uses permitted pursuant to this Section 1.04 other than mere office use, Landlord, at Tenant's expense, shall file for and use commercially reasonable efforts to obtain such an amendment to the certificate of occupancy; provided, that neither this Lease nor any of Tenant's obligations hereunder shall be conditioned upon Landlord obtaining the same. If Tenant desires to obtain any special permits for use of the Premises (including, for purposes of illustration only, and not by way of limitation, a public assembly permit or a temporary or permanent liquor license for the serving of alcohol to Tenant's employees and business invitees for consumption in the Premises only (it being agreed that Tenant shall have procured and furnished to Landlord a policy of liquor liability insurance reasonably satisfactory to Landlord in connection therewith and Tenant shall reimburse Landlord for any increased insurance costs incurred by Landlord in connection therewith), Landlord, at Tenant's expense, shall reasonably cooperate with respect to the same to the extent such cooperation is reasonably necessary; provided, that obtaining any such permits shall be the sole responsibility of Tenant. If Landlord shall incur any actual out-of-pocket cost in connection with such cooperation or the amendment to the certificate of occupancy, Tenant shall, within 30 days after receipt of an invoice therefor, reimburse Landlord for such costs as Additional Charges.

## ARTICLE 2

### Rent

**2.01**     **Rent.** “ Rent ” shall consist of Fixed Rent and Additional Charges.

**2.02**     **Fixed Rent.** The fixed rent (“ Fixed Rent ”) shall be as follows:

(a)       for the period commencing on the Rent Commencement Date and ending on the day immediately preceding the 40th Floor Expiration Date an amount equal to \$5,160,015.00 (i.e., at the rate per annum of \$105.00 per rentable square foot of the Premises);

(b)       for the period commencing on the 40th Floor Expiration Date and ending on the 37th Floor Expiration Date an amount equal to \$3,528,735.00 (i.e., at the rate per annum of \$105.00 per rentable square foot of the Premises).

(c)       Fixed Rent shall be payable by Tenant in equal monthly installments in advance on the Rent Commencement Date and on the first day of each calendar month thereafter (provided that if the Rent Commencement Date is not the first day of a month, then Fixed Rent for the month in which the Rent Commencement Date occurs shall be prorated and paid on the Rent Commencement Date). “ Rent Commencement Date ” means the date occurring in the 4th month after the Effective Date which is the same numerical date in the month as the Effective Date (except that if no same numerical date shall exist in such 4th month, the Rent Commencement Date shall be the last day of such 4th month. The Rent Commencement Date may be subject to adjustment as expressly provided in Section 4.01(d) of this Lease.

**2.03**     **Additional Charges.** “ Additional Charges ” means PILOT Payments, Additional Tax Payments, Impositions Payments, Tax Payments, Operating Payments and all other sums of money, other than Fixed Rent, at any time payable by Tenant under this Lease, all of which Additional Charges shall be deemed to be rent. “ Recurring Additional Charges ” means Additional Tax Payments, Impositions Payments, Operating Payments and either PILOT Payments or Tax Payments, as applicable.

**2.04**     **PILOT Payments.** (a) “ Base PILOT Amount ” means the PILOT Amount payable by Landlord pursuant to the PILOT Agreement for the Tax Year commencing on July 1, 2020 (the “ Base PILOT Year ”) pursuant to the terms of the PILOT Agreement as in effect as of the Effective Date. “ PILOT Amount ” shall have the meaning ascribed to such term in the PILOT Agreement, as such PILOT Agreement is in effect on the Effective Date.

(b) “PILOT Agreement” means that certain Amended and Restated Agency Lease Agreement effective as of August 1, 2016, by and between the New York City Industrial Development Agency (the “IDA”) and Landlord, as the same may be modified from time to time; provided, however, that any modification of such PILOT Agreement which would materially adversely affect or materially adversely increase Tenant’s obligations under this Article 2 shall be disregarded for the purpose of computing Tenant’s liability for PILOT Payments under this Article 2 (it being agreed that Landlord shall not be restricted from entering into any such modification but Landlord shall not have the right to pass through any such obligations that materially adversely affect Tenant under this Article 2). Landlord represents and warrants to Tenant that a true and complete copy of the PILOT Agreement has been delivered or made available to Tenant.

(c) “PILOT” means, with respect to any Tax Year, (i) the PILOT Amount payable by Landlord for such Tax Year pursuant to the PILOT Agreement, (ii) any reasonable expenses incurred in contesting the assessed value of the Building (which expenses shall not exceed the amount of any refund or credit attributable to any reduced assessment resulting from such contest), which expenses shall be allocated to the Tax Year(s) to which such expenses relate and (iii) the “Annual Administrative Fee” (as defined in the PILOT Agreement).

(d) “Tax Year” means each period of 12 months, commencing on the first day of July of each such period, in which occurs any part of the Term, or such other period of 12 months occurring during the Term as hereafter may be adopted as the fiscal year for real estate tax purposes of the City of New York.

(e) “Tenant’s Share” means the percentage which is calculated by dividing (i) the total rentable square footage of the Premises by (ii) the total rentable square footage of the office space in the Building, provided that the method of calculating the rentable square footage of the Premises shall be the same as the method of calculating the rentable square footage of the office space in the Building at the time of any such calculation. As of the Effective Date, Tenant’s Share is 2.89%.

(f) (i) If PILOT for any Tax Year from and after July 1 of the Tax Year immediately following the Base PILOT Year (i.e., from and after the day immediately following the last day of the Base PILOT Year) until the “Cessation Date” (as defined in the PILOT Agreement; such date shall hereinafter be referred to in this Lease as the “PILOT Cessation Date”), shall exceed the Base PILOT Amount (or, with respect to the Tax Year in which the PILOT Cessation Date occurs, if the PILOT Cessation Date occurs on a date other than the first day of a Tax Year, if PILOT for such Tax Year shall exceed the amount that is the product of the Base PILOT Amount multiplied by a fraction, the numerator of which is the number of days in such Tax Year prior to the PILOT Cessation Date and the denominator of which is the number of days in such Tax Year), Tenant shall pay to Landlord (each, a “PILOT Payment”) Tenant’s Share of the amount by which PILOT for such Tax Year is greater than the Base PILOT Amount. The PILOT Payment for each Tax Year shall be due and payable by Tenant in installments in the same manner that PILOT for such Tax Year is due and payable by Landlord, whether as directed under the PILOT Agreement, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay the PILOT Payment (or any installment thereof) within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require the PILOT Payment (or installment thereof) to be paid by Tenant 30 days prior to the date such PILOT Payment (or installment thereof) first becomes due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) of PILOT being billed. If there shall be any increase in the PILOT for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the PILOT for any Tax Year, the PILOT Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.04(g) and 2.08(a), to the extent applicable). In no event, however, shall PILOT be reduced below the Base PILOT Amount.

(ii) In addition to the PILOT Payments set forth above, and the Impositions Payment and Tax Payment set forth below, Tenant shall pay, as Additional Charges on account of real property taxes, for each Tax Year (or portion thereof) throughout the Term of this Lease from and after the Tax Year commencing on July 1, 2017, an amount equal to the product of (A) the applicable Additional Tax Amount, multiplied by (B) the number of rentable square feet contained in the Premises (the “ Additional Tax Payment ”); provided, that if the rentable square footage of the Premises varies during any calendar year, such variation shall be taken into account for purposes of the calculation of the Additional Tax Payment for such calendar year. The Additional Tax Payment shall be due and payable in equal installments on the dates on which PILOT Payments (or installments thereof) are due and payable by Tenant. Tenant shall pay each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require such installments to be paid by Tenant on the same dates on which Tenant is required to pay PILOT Payments (or installments thereof). The “ Additional Tax Amount ” shall be (I) \$0 for the Tax Year beginning July 1, 2017, (II) \$0.75 for the Tax Year beginning on July 1, 2018, (III) \$1.75 for the Tax Year beginning on July 1, 2019 and (IV) \$3.25 for each Tax Year thereafter for the full remaining Term of this Lease. By way of example, if the Premises contains 100,000 rentable square feet during the Tax Year beginning on July 1, 2020, the Additional Tax Payment for the Tax Year beginning on such July 1 shall be \$325,000.00 (i.e.,  $\$3.25 \times 100,000 = \$325,000.00$ ).

(g) If Landlord shall receive a refund of PILOT for any Tax Year in which PILOT exceeded the Base PILOT Amount (or a credit in lieu of such a refund), Landlord shall pay to Tenant Tenant’s Share of the net refund or credit (after deducting from such refund or credit the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the PILOT for such Tax Year and only to the extent that such costs and expenses shall not exceed the amount of any refund or credit of Tenant’s Share of PILOT for the corresponding Tax Year); provided, that such payment to Tenant shall in no event exceed Tenant’s PILOT Payment paid for such Tax Year.

(h) If the PILOT Amount comprising the Base PILOT Amount is reduced as a result of an appropriate proceeding or otherwise, the PILOT as so reduced shall for all purposes be deemed to be the Base PILOT Amount and Landlord shall notify Tenant of the amount by which the PILOT Payments previously made were less than the PILOT Payments required to be made under this Section 2.04, and Tenant shall pay the deficiency within 30 days after demand therefor.

(i) (i) Tenant shall promptly cooperate with Landlord in complying with the disclosure and reporting requirements set forth in the PILOT Agreement, including, without limitation, by furnishing such information and/or completing such questionnaires and reports as may be required to satisfy the requirements of Section 8.7 (Employment Matters), Section 8.8 (Non-Discrimination), Section 8.14 (Automatically Deliverable Documents), Section 8.15 (Requested Documents) and Section 8.16 (Periodic Reporting Information for the Agency) of the PILOT Agreement. Tenant shall furnish any such information and deliver any such completed questionnaires and reports to Landlord on or prior to the date that is 10 Business Days before the date Landlord is required to deliver same to the IDA (unless the period between a request to Landlord from the IDA for any such information, questionnaires or reports and the date such information, questionnaires or reports are due to the IDA is shorter than 10 Business Days, in which case Tenant shall deliver such information, questionnaires or reports to Landlord no less than 3 Business Days prior to the date Landlord is required to deliver same to the IDA).

(ii) Tenant represents and warrants that Tenant's occupancy at the Project will not result in the removal of an industrial or manufacturing plant or facility of Tenant located outside of the City of New York, but within the State of New York, to the Project or in the abandonment of one or more such industrial or manufacturing plants or facilities of Tenant located outside of the City of New York but within the State of New York.

(iii) Tenant represents and warrants that neither Tenant, nor any Principals of Tenant (A) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, (B) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past 5 years, (C) has been convicted of a felony in the past 10 years, (D) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense, or (E) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum. For purposes of this paragraph (iii) only, all capitalized terms used in this paragraph (iii) (other than the term "Tenant") shall have the meanings ascribed to them in the PILOT Agreement.

(iv) Tenant covenants that at all times from and after the Effective Date through the expiration or earlier termination of this Lease (the "Effective Period"), Tenant shall ensure that employees and applicants for employment with Tenant are treated without regard to their race, color, creed, age, sex or national origin. As used in this paragraph (iv) only, the term "treated" shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(v) Tenant shall indemnify and hold Landlord harmless from and against any and all loss, cost, liability, damage or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs, but specifically excluding any consequential, special or punitive damages) incurred by Landlord (or any of its Affiliates) arising from any failure of Tenant to comply in all respects with Sections 2.04(i)(i) or 2.04(i)(iv) or any misrepresentation by Tenant contained in Sections 2.04(i)(ii) or 2.04(i)(iii) or arising from any other "Event of Default" (as defined in the PILOT Agreement) under the PILOT Agreement which is solely caused by any act or omission of, or breach of any representation or warranty by, Tenant, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents, in each case, beyond any applicable notice and cure periods set forth in the PILOT Agreement (including, without limitation, Section 8.9(f)(iii) of the PILOT Agreement). If any amount payable by Landlord under the PILOT Agreement is greater than it would otherwise be, or if any additional amount is payable by Landlord under the PILOT Agreement, in either case, due to any failure of Tenant to comply in all respects with Sections 2.04(i)(i) or 2.04(i)(iv) or any misrepresentation by Tenant contained in Sections 2.04(i)(ii) or 2.04(i)(iii), Tenant shall pay to Landlord 100% of the amount by which such amount payable is so greater than it would otherwise be or 100% of the additional amount payable, as the case may be, within 10 days after Landlord's demand therefor.

(vi) Landlord agrees to observe and perform all of its obligations under the PILOT Agreement and not to cause or permit an Event of Default (as defined in the PILOT Agreement) to occur thereunder if and to the extent Landlord's failure to observe and perform any such obligations or to permit such Event of Default, as applicable, is reasonably likely to materially adversely affect Tenant's obligations under this Article 2. Landlord shall indemnify and hold Tenant harmless from and against any and all loss, cost, liability, damage or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs, but specifically excluding any consequential, special or punitive damages) incurred by Tenant or any of its Affiliates arising from any "Event of Default" (as defined in the PILOT Agreement) under the PILOT Agreement beyond any applicable notice and cure periods set forth therein which is solely caused by Landlord, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents and which is not caused by any act or omission of, or breach of any representation or warranty by, Tenant. If any amount payable by Landlord under the PILOT Agreement is greater than it would otherwise be, or if any additional amount is payable by Landlord under the PILOT Agreement, in either case, due to any "Event of Default" (as defined in the PILOT Agreement) under the PILOT Agreement which is solely caused by Landlord, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents and which is not caused by any act or omission of, or breach of any representation or warranty by, Tenant, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents, Tenant shall have no liability to pay for any of such incremental amount by which Landlord's payment obligation is so greater or such additional amount and Landlord will reasonably promptly provide Tenant with any information reasonably required to verify such amounts.

(j) Landlord shall, with respect to each Tax Year, initiate and pursue in good faith an application or proceeding seeking a reduction in the assessed valuation of the Building, except that Landlord shall not be required to initiate or pursue any such application or proceeding for any such Tax Year if Landlord obtains with respect to such Tax Year a letter from a reputable certiorari attorney that in such person's opinion it would not be advisable or productive to bring such application or proceeding for the Tax Year in question. Tenant, for itself and its immediate and remote subtenants and successors in interest hereunder, hereby waives, to the extent permitted by law, any right Tenant may now or in the future have to protest or contest any PILOT or Taxes or to bring any application or proceeding seeking a reduction in PILOT, Taxes or assessed valuation or otherwise challenging the determination thereof.

**2.05 Impositions.**

(a) “Base Impositions Amount” means Impositions (excluding any amounts described in Section 2.05(b)(ii)) for the Tax Year commencing on July 1, 2017.

(b) “Impositions” means (i) subject to clause (B) of the last sentence of this Section 2.05(b), any and all real estate taxes, vault taxes, assessments and special assessments, levied, assessed or imposed upon or with respect to the Building by any federal, state, municipal or other government or governmental body or authority, including, without limitation, any taxes, assessments or charges imposed upon or against the Building or Landlord solely with respect to any business improvement district and (ii) any reasonable expenses incurred by Landlord in contesting such taxes, assessments or charges, which expenses shall be allocated to the Tax Year to which such expenses relate to the extent that such expenses do not exceed the amount of any reduction in Impositions for the corresponding Tax Year. If at any time the method of taxation shall be altered so that in lieu of or as an addition to or as a substitute for, the whole or any part of such taxes theretofore imposed on real estate (other than real estate taxes levied by the City of New York) there shall be levied, assessed or imposed (x) a tax, assessment, levy, imposition, fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (y) any other such substitute tax, assessment, levy, imposition, fee or charge, including without limitation, business improvement district and transportation taxes, fees and assessments, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be included in “Impositions” to the extent that such substitution is evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof, or other documents or evidence that reasonably demonstrate that the applicable governmental authority intended for such tax or assessment to constitute a substitution for any Impositions (provided that the same shall be computed as if the Building is Landlord's sole asset and the income therefrom is Landlord's sole income). If the owner, or lessee under a Superior Lease (as hereinafter defined), of all or any part of the Building is an entity exempt from the payment of taxes, assessments or charges described in clause (i), there shall be included in “Impositions” the taxes, assessments or charges described in clause (i) which would be so levied, assessed or imposed if such owner or lessee were not so exempt, and such taxes, assessments or charges shall be deemed to have been paid by Landlord on the dates on which such taxes, assessments or charges otherwise would have been payable if such owner or lessee were not so exempt but only to the extent Landlord is actually obligated to and does pay such taxes, assessments or charges or any payments in lieu thereof. If any Impositions consisting of a special tax assessment may be payable in installments, then, for the purposes of this Section 2.05 such Impositions shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law (together with any interest charged by the applicable government authority, if interest is so charged), and there shall be deemed included in Impositions for each Tax Year only the installments of such assessment deemed to be payable during such Tax Year. “Impositions” shall not include (A) any municipal, state or federal income taxes assessed against Landlord, any capital levy, estate, gift, succession, inheritance or transfer taxes, or any corporate franchise taxes or unincorporated business taxes, income or profit tax, or any transfer or mortgage recording tax imposed upon any owner or lessee of the Building, or any part thereof, or capital levy that is or may be imposed upon the net income of Landlord, (B) any PILOT and Taxes and (C) any penalties, interest and late charges imposed on Landlord, any Superior Lessor or Superior Mortgagee for failure to make payments when due, except to the extent directly resulting from a default by Tenant hereunder.

(c) For each Tax Year from and after the Tax Year commencing on July 1, 2017, if Impositions for any Tax Year shall exceed the Base Impositions Amount, Tenant shall pay to Landlord (each, an “Impositions Payment”) Tenant’s Share of the amount by which Impositions for such Tax Year are greater than the Base Impositions Amount. The Impositions Payment for each Tax Year shall be due and payable in installments in the same manner that Impositions for such Tax Year are due and payable by Landlord, whether to the applicable taxing authority, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay Tenant’s Share of each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require Tenant’s Share of Impositions to be paid by Tenant 30 days prior to the date such Impositions first become due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) being billed. If there shall be any increase in the Impositions for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Impositions for any Tax Year, the Impositions Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.05(d) and 2.08(a), to the extent applicable). In no event, however, shall Impositions be reduced below the Base Impositions Amount.

(d) If Landlord shall receive a refund of Impositions for any Tax Year in which Impositions exceeded the Base Impositions Amount, Landlord shall pay to Tenant Tenant’s Share of the net refund (after deducting from such refund the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the Impositions for such Tax Year and to the extent that such expenses do not exceed the amount of any reduction in Tenant’s Share of Impositions for the corresponding Tax Year); provided, that such payment to Tenant shall in no event exceed Tenant’s Impositions Payment paid for such Tax Year.

(e) If the Base Impositions Amount is reduced as a result of an appropriate proceeding or otherwise, Landlord shall notify Tenant of the amount by which any Impositions Payments previously made were less than the Impositions Payments required to be made under this Section 2.05, and Tenant shall pay the deficiency within 30 days after demand therefor.

(f) Tenant shall pay any and all commercial rent occupancy tax and any other occupancy tax or rent tax relating to the Premises now in effect or hereafter enacted. If any occupancy tax or rent tax (including, without limitation, any commercial rent occupancy tax) now in effect or hereafter enacted shall be payable by Landlord in the first instance or hereafter is required to be paid by Landlord, then Tenant shall reimburse Landlord as Additional Charges for all such amounts paid within 30 days after demand therefor.

**2.06 Tax Payments.** (a) “Taxes” means (i) the real estate taxes levied, assessed or imposed upon or with respect to the Building by the City of New York and (ii) any reasonable expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Building, which expenses shall be allocated to the Tax Year to which such expenses relate. If at any time the method of taxation shall be altered so that in lieu of or as an addition to or as a substitute for, the whole or any part of such real estate taxes theretofore imposed there shall be levied, assessed or imposed (x) a tax, assessment, levy, imposition, fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (y) any other such substitute tax, assessment, levy, imposition, fee or charge, including without limitation, business improvement district and transportation taxes, fees and assessments, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be included in “Taxes” to the extent substituted and to the extent that such substitution is evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof, or other documents or evidence that reasonably demonstrate that the applicable governmental authority intended for such tax or assessment to constitute a substitution for any Taxes (provided that the same shall be computed as if the Building is Landlord’s sole asset and the income therefrom is Landlord’s sole income). If the owner, or lessee under a Superior Lease, of all or any part of the Building is an entity exempt from the payment of taxes described in clause (i), there shall be included in “Taxes” the taxes described in clause (i) which would be so levied, assessed or imposed if such owner or lessee were not so exempt and such taxes shall be deemed to have been paid by Landlord on the dates on which such taxes otherwise would have been payable if such owner or lessee were not so exempt but only to the extent Landlord is actually obligated to and does pay such taxes, assessments or charges or any payments in lieu thereof. If any Taxes consisting of a special tax assessment may be payable in installments, then, for the purposes of this Section 2.06 such Taxes shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law (together with any interest charged by the applicable government authority, if interest is so charged), and there shall be deemed included in Taxes for each Tax Year only the installments of such assessment deemed to be payable during such Tax Year. “Taxes” shall not include (A) any municipal, state or federal income taxes assessed against Landlord, any capital levy, estate, gift, succession, inheritance or transfer taxes, or any corporate franchise taxes or unincorporated business taxes, income or profit tax, or any transfer or mortgage recording tax imposed upon any owner or lessee of the Building, or any part thereof, or capital levy that is or may be imposed upon the net income of Landlord, (B) any PILOT and Impositions and (C) any penalties, interest and late charges imposed on Landlord, any Superior Lessor or Superior Mortgagee for failure to make payments when due, except to the extent directly resulting from a default by Tenant hereunder.

(b) (i) From and after the PILOT Cessation Date, if Taxes for any Tax Year, including the Tax Year in which the PILOT Cessation Date occurs, shall exceed the Base PILOT Amount (or, with respect to the Tax Year in which the PILOT Cessation Date occurs, if the PILOT Cessation Date occurs on a date other than the first day of a Tax Year, if Taxes for such Tax Year shall exceed the amount that is the product of the Base PILOT Amount multiplied by a fraction, the numerator of which is the number of days in such Tax Year from and after the PILOT Cessation Date and the denominator of which is the number of days in such Tax Year), Tenant shall pay to Landlord (each, a “Tax Payment”) Tenant’s Share of the amount by which Taxes for such Tax Year (or portion thereof from and after the PILOT Cessation Date) are greater than the Base PILOT Amount (or such pro-rated amount described in the first parenthetical in this sentence, if applicable). The Tax Payment for each Tax Year shall be due and payable in installments in the same manner that Taxes for such Tax Year are due and payable by Landlord, whether to the City of New York, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay Tenant’s Share of each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require Tenant’s Share of Taxes to be paid by Tenant 30 days prior to the date such Taxes first become due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) being billed. If there shall be any increase in the Taxes for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, the Tax Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.06(c) and 2.08(a), to the extent applicable). In no event, however, shall Taxes be reduced below the Base PILOT Amount.

(ii) Notwithstanding the occurrence of the PILOT Cessation Date, after the PILOT Cessation Date Tenant shall continue to pay Additional Tax Payments as set forth in Section 2.04(f)(ii), except that such Additional Tax Payments shall be due and payable in installments on the dates on which Tax Payments (or installments thereof) are due and payable by Tenant, and Tenant shall pay each such installment within 10 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require such installments to be paid by Tenant on the same dates on which Tenant is required to pay Tax Payments (or installments thereof).

(c) If Landlord shall receive a refund of Taxes for any Tax Year in which Taxes exceeded the Base PILOT Amount (from and after the occurrence of the PILOT Cessation Date), Landlord shall pay to Tenant Tenant’s Share of the net refund (after deducting from such refund the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the Taxes for such Tax Year and to the extent that such expenses do not exceed the amount of any reduction in Tenant’s Share of Taxes for the corresponding Tax Year); provided, that (i) such payment to Tenant shall in no event exceed Tenant’s Tax Payment paid for such Tax Year and (ii) if the PILOT Cessation Date occurs on a date other than the first day of any Tax Year, any refund with respect to such Tax Year shall be prorated to correspond to the portion of such Tax Year with respect to which Tenant paid a Tax Payment.

(d) If the Base PILOT Amount is reduced as a result of an appropriate proceeding or otherwise after the PILOT Cessation Date, Landlord shall notify Tenant of the amount by which any Tax Payments previously made were less than the Tax Payments required to be made under this Section 2.06, and Tenant shall pay the deficiency within 30 days after demand therefor.

**2.07 Operating Payments.** (a) “Base Operating Amount” means Operating Expenses for the Base Operating Year; provided, that, if, due to construction warranties in effect during the Base Operating Year, materially fewer expenses on account of repairs to the Building are paid or incurred by or on behalf of Landlord during such Base Operating Year than would typically be paid or incurred during a calendar year with respect to a new First Class Office Building comparable in size to the Building with no construction warranties in effect, then the Operating Expenses for the Base Operating Year shall be adjusted to reflect the Operating Expenses that would have been paid or incurred if such construction warranties had not been in effect during the Base Operating Year. For purposes of the foregoing sentence only, the term “construction warranties” shall be deemed to refer solely to warranties in effect for a newly constructed First Class Office Building that would not typically be in effect at any given time for a First Class Office Building on account of alterations, improvements, repairs and replacements.

(b) “Base Operating Year” means the calendar year 2017.

(c) “Landlord’s Statement” means an instrument setting forth the Operating Payment payable by Tenant for a specified Operating Year.

(d) “Operating Expenses” means, without duplication, all expenses paid or incurred by or on behalf of Landlord in respect of the repair, replacement, maintenance, operation and security of the Building as reflected on Landlord’s books and records (which Landlord shall keep in accordance with GAAP or other acceptable accounting method consistent with the standards of a First Class Office Building), including, without limitation, (i) subject to clause (BB) of this Section 2.07(d), salaries, wages, medical, surgical, insurance (including, without limitation, group life and disability insurance), union and general welfare benefits, pension payments, severance payments, sick day payments and other fringe benefits of employees of Landlord, Landlord’s affiliates and their respective contractors engaged in such repair, replacement, maintenance, operation and/or security; (ii) subject to clause (BB) of this Section 2.07(d), payroll taxes, worker’s compensation, uniforms and related expenses (whether direct or indirect) for such employees; (iii) the cost of fuel, gas, steam, electricity, heat, ventilation, air-conditioning and chilled or condenser water, water, sewer and other utilities, together with any taxes and surcharges on, and fees paid in connection with the calculation and billing of, such utilities; (iv) the cost of painting and/or decorating all areas of the Project, excluding, however, any space contained therein which is demised or available for demise to tenants; (v) the cost of casualty, liability, fidelity, rent and all other insurance regarding the Building; (vi) subject to the limitations on capital expenditures hereinafter provided, the cost of all supplies, tools, materials and equipment, whether by purchase or rental, used in the repair, replacement, maintenance, operation and/or security of the Building, and any sales and other taxes thereon; (vii) the fair market rental value of Landlord’s office in the Building and any other premises in the Building utilized by the personnel of either Landlord, Landlord’s affiliates or Landlord’s contractors, in connection with the repair, replacement, maintenance, operation and/or security thereof, and all office expenses, such as telephone, utility, stationery and similar expenses incurred in connection therewith; provided, that (A) for the purpose of calculating Operating Expenses for the Base Operating Year and each subsequent Operating Year, the aggregate rentable square footage of Landlord’s office shall be assigned a fixed number, (B) the fair market rental of such office shall be included in the Base Operating Year, and (C) such fair market rental shall annually be subject to fair market rental increases; (viii) the cost of cleaning and janitorial services, including, without limitation, glass cleaning, snow and ice removal and garbage and waste collection and disposal; (ix) the cost of all interior and exterior landscaping and all temporary exhibitions located at or within the Project; (x) the cost of all alterations, repairs, replacements and/or improvements made at any time following the Base Operating Year by or on behalf of Landlord, whether structural or non structural, ordinary or extraordinary, foreseen or unforeseen, and whether or not required by this Lease, and all tools and equipment related thereto; provided, that if under generally accepted accounting principles consistently applied (“GAAP”), any of the costs referred to in this clause (x) are required to be capitalized, then such costs shall not be included in Operating Expenses unless they (I) are required by any Laws that first became effective (1) on or after the Effective Date or (2) before the Effective Date but with respect to which the obligation to comply first arises after the Effective Date, (II) have the effect of reducing expenses that would otherwise be included in Operating Expenses (to the extent of the reduction in Operating Expenses reasonably anticipated by Landlord) or (III) constitute a replacement which in Landlord’s reasonable judgment is prudent to make in lieu of repairs to the replaced item(s) so long as it is reasonably likely that the amortized replacement cost of the item in question will be less expensive than the aggregate reasonably anticipated total cost to repair such item (which may include multiple repairs) over the same amortization period, in any of which events the cost thereof, together with interest thereon at either (A) if Landlord shall not finance such alterations, repairs, replacements and/or improvements, the Interest Rate in effect on December 31 of the Operating Year in which such costs were incurred or (B) if Landlord shall finance such alterations, repairs, replacements and/or improvements, the actual costs incurred by Landlord to finance such alterations, repairs, replacements and/or improvements shall be amortized and included in Operating Expenses over the useful life of the item in question, as reasonably determined by Landlord in accordance with GAAP or such alternative measure as referred to hereinabove; provided further, that if any such alterations, repairs, replacements and/or improvements described in clause II are made for the purpose of having a beneficial impact on the environment (including, without limitation, if the same are made in connection with participating in a program intended to have a beneficial impact on the environment), then, at Landlord’s option, the cost thereof, together with such interest as described in the foregoing clauses (A) and (B), may be amortized and included in Operating Expenses over the period that Landlord reasonably determines in accordance with GAAP that it will take for such cost to equal the aggregate amount of the reduction in Operating Expenses realized as a result of such alteration, repair, replacement and/or improvement; (xi) costs of security services, including, without limitation, offsite vehicle screening for vehicles seeking access to the Project; (xii) management fees not exceeding 3% of the aggregate rents, additional rents and other charges payable to Landlord by tenants of the Building; (xiii) all reasonable costs and expenses of legal, bookkeeping, accounting and other professional services; (xiv) condominium assessments, common charges or similar charges, if the Building is at any time converted to a condominium structure; (xv) customary fees, dues and other contributions paid by or on behalf of Landlord to civic or other real estate organizations and any assessments, dues, levies or other charges paid to any business improvement district, owners’ association or similar organization or to any entity on behalf of such an organization (including, without limitation, any contribution to the ERY Facility Airspace Parcel Owners’ Association); (xvi) all costs and expenses expressly included in Operating Expenses pursuant to the provisions of this Lease; and (xvii) all other fees, costs, charges and expenses properly allocable to the repair, replacement, maintenance, operation and/or security of the Project, in accordance with then prevailing customs and practices of the real estate industry in the Borough of Manhattan, City of New York. Notwithstanding the foregoing, “Operating Expenses” shall not include the following:

- (A) depreciation and amortization (except with respect to the alterations, repairs, replacements, and/or improvements described in clauses I, II and III of clause (x) of this Section 2.07(d));
- (B) principal and interest payments and other costs incurred in connection with any financing or refinancing of the Building or any portion thereof (except as provided in clause (x) above) including, without limitation, legal, accounting, consultant, mortgage, brokerage or other expenses related thereto;
- (C) the cost of tenant improvements made for tenant(s) of the Building or cash allowances in lieu thereof;
- (D) brokerage commissions and advertising and promotional expenses incurred in procuring tenants for the Building;
- (E) cost of any work or service performed for any tenant of the Building (including Tenant), whether at the expense of Landlord or such tenant, to the extent that such work or service is in excess of the work or service that Landlord is required to furnish Tenant under this Lease at the expense of Landlord;
- (F) the cost of any electricity consumed in the Premises or in any other space in the Building demised or available for demise to tenants;
- (G) the cost of overtime heating, ventilating and air conditioning (including costs related to chilled water) for which Landlord is directly compensated by payment by tenants, or any other occupant of the Building, including Tenant;
- (H) PILOT, Impositions and Taxes;
- (I) attorneys' fees and disbursements and costs and expenses incurred in connection with preparing and negotiating leases, amendments and modifications thereto, consents to sublease, assignments, takeover or assumption fees, or any form leases with respect to the operation of the Building and disputes with tenants or occupants in the Building;

(J) legal fees incurred in connection with suits brought by tenants with respect to their leases or occupancy agreements in the Building;

(K) any cost to the extent Landlord is reimbursed therefor out of insurance proceeds or otherwise (other than by means of operating expense reimbursement provisions contained in the leases of other tenants) or any such cost to the extent Landlord would have been compensated therefor if Landlord had carried the insurance coverage required of Landlord hereunder;

(L) expenses of relocating or moving any tenant(s) of the Building, and all costs and expenses of taking over or assuming the lease obligations of a tenant for such tenant's premises in a location other than the Building and the costs and expenses of relocating such tenant to the Building, including any payments required to be made in connection with the termination of such lease pursuant to Article 31-B of the Tax Law of the State of New York or other similar statute;

(M) costs (including attorney's fees and costs of settlements, judgments and arbitration awards) arising from claims or disputes in connection with tort or negligence litigation pertaining to Landlord and/or the Project, or in connection with any such claims or disputes arising from Landlord's negligence or willful misconduct;

(N) costs incurred with respect to a sale of all or any portion of the Project or any interest therein or in any person or entity of whatever tier owning an interest therein and the cost of maintaining, organizing or reorganizing the entity that is the landlord under this Lease;

(O) costs of alterations and improvements and other expenditures which are required to be capitalized under GAAP, unless permitted to be included in Operating Expenses under clause (x) of this Section 2.07(d);

(P) any lease payments for equipment which, if purchased, would be specifically excluded as a capital improvement, unless same is permitted to be included in Operating Expenses under clause (x) of this Section 2.07(d);

(Q) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests;

(R) costs of performing the initial construction of the Building by or on behalf of Landlord (the "Base Building Work"), and the costs incurred to correct any defect discovered during the first twelve (12) month period following the Effective Date (or such longer period as may be covered under any enforceable warranty or guaranty in connection with the Base Building Work) to the extent resulting from the improper initial construction or design of the Building, and all other hard and soft costs and expenses relating to the initial construction of the Project;

(S) any rent, additional rent or other charge under any ground leases or under Superior Leases (provided, however, that Landlord shall not be required to exclude from Operating Expenses any expense that would otherwise be includable in Operating Expenses pursuant to the terms of this Lease merely because Landlord's obligation under any such ground lease or Superior Lease to incur such expense is characterized as a rental obligation under any such ground lease or Superior Lease);

(T) any cost representing an amount paid to an Affiliate of Landlord to the extent the same is in excess of the amount which would reasonably have been paid in the absence of such relationship;

(U) the cost of any additions to or expansions of the Building that increase the leasable space in the Building;

(V) expenditures for repairing and/or replacing any defect in any work performed by or on behalf of Landlord pursuant to the provisions of this Lease which Landlord is obligated to do at its sole cost and expense, to the extent expenditures for such repairs and/or replacements would have been covered had Landlord obtained a commercially reasonable warranty for such work;

(W) all costs of remediating, removing or encapsulating asbestos, or other hazardous materials or substances in or about the Building, except to the extent the same shall be attributable to any act or omission of Tenant, Tenant's agents, employees, contractors, invitees or licensees;

(X) interest, fines, penalties or other late payment charges paid by Landlord as the result of Landlord's failure to make payments when due, except to the extent (1) that Landlord is contesting such payments timely and in good faith, or (2) resulting from a default by Tenant hereunder;

(Y) to the extent any costs includable in Operating Expenses are incurred with respect to both (1) the Project and (2) other properties, there shall be excluded from Operating Expenses a fair and reasonable percentage thereof which is properly allocable to such other properties;

(Z) costs of withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act, except to the extent that such costs are offset by savings realized by Landlord in connection therewith;

(AA) franchise or income taxes imposed upon Landlord;

(BB) except to the extent specifically permitted in accordance with the provisions of this Section 2.07 to be included in Operating Expenses, Landlord's corporate overhead and general and administrative expenses not specifically allocated to the operation, use, management, maintenance, repair or ownership of the Building, including, without limitation, salaries and the cost of benefits in either case for personnel above the level of building manager;

(CC) costs of acquiring, leasing, insuring, restoring, removing or replacing works of art and sculptures of the quality and nature of "fine art" rather than decorative art work customarily found in First Class Office Buildings; provided, that Landlord shall not be required to exclude from Operating Expenses the costs of insuring and cleaning any such "fine art" to the extent such insurance and cleaning costs are consistent with the costs incurred for such items and generally included in "operating expenses" for purposes of operating expense escalation provisions in other First Class Office Buildings;

(DD) the cost of installing, operating and maintaining any specialty facility such as any emergency generator, co-generation plant(s) and related equipment, an observatory and access thereto, broadcasting facilities, luncheon club, athletic or recreational club, child care facility, auditorium, restaurant, cafeteria or dining facility, conference center or similar specialty facilities (but not the cost of maintaining and operating any satellite antennae facility for use by Building tenants, the Messenger Center, or any of the aforementioned specialty facilities if such facilities are made available at no separate charge (other than an additional rent payment in the nature of an operating expense escalation) for use by tenants (including Tenant) of the Building generally);

(EE) any bad debt loss, rent loss or reserves for bad debts or rent loss; and

(FF) duplicative charges for the same item.

(e) "Operating Year" means each calendar year during the Term.

(f) From and after the day immediately following the expiration of the Base Operating Year, for each Operating Year, Tenant shall pay (each, an "Operating Payment") Tenant's Share of the amount, if any, by which Operating Expenses for such Operating Year exceed the Base Operating Amount. If Tenant's obligation to pay Operating Expenses commences on a date other than January 1, Tenant's Operating Payment for the Operating Year immediately following the Base Operating Year shall be prorated to correspond to the portion of such Operating Year with respect to which Tenant is obligated to pay Operating Expenses pursuant to the terms of this Lease.

(g) If during any relevant period (including, without limitation, the Base Operating Year) (i) less than 95% of the rentable square footage of the office space in the Building shall be occupied, and/or (ii) the tenant or occupant of any office space in the Building undertook to perform work or services therein in lieu of having Landlord perform the same and the cost thereof would have been included in Operating Expenses, with the result that tenants or occupants of less than 95% of the rentable square footage of the office space in the Building are having Landlord perform any such work or service, then, in either such event, the Operating Expenses for such period shall be increased to reflect the Operating Expenses that would have been incurred if 95% of the rentable square footage of then office space in the Building had been occupied or if Landlord had performed such work or services for tenants occupying 95% of the rentable square footage of the office space in the Building, as the case may be. Additionally, and without limiting the foregoing, it shall be assumed during any relevant period that all services in respect of the Building shall be in place and fully costed (e.g., discounts for the initial period of multi-year contracts shall be appropriately adjusted); and with respect to the calculation of the Operating Expenses for the Base Operating Year only, if and to the extent certain expenses are incurred with respect to only a portion of the Base Operating Year, then such expenses shall be annualized to more closely approximate the cost that will be incurred for such expense over the course of the subsequent full year.

(h) Landlord may furnish to Tenant, prior to the commencement of each Operating Year, a statement setting forth Landlord's reasonable estimate of the Operating Payment for such Operating Year. Tenant shall pay to Landlord on the first day of each month during such Operating Year, an amount equal to 1/12th of Landlord's estimate of the Operating Payment for such Operating Year. If Landlord shall not furnish any such estimate for an Operating Year or if Landlord shall furnish any such estimate for an Operating Year subsequent to the commencement thereof, then (A) until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 2.07 in respect of the last month of the preceding Operating Year; (B) after such estimate is furnished to Tenant, Landlord shall notify Tenant whether the installments of the Operating Payment previously made for such Operating Year were greater or less than the installments of the Operating Payment to be made in accordance with such estimate, and (x) if there is a deficiency, Tenant shall pay the amount thereof within 30 days after demand therefor, or (y) if there is an overpayment, Landlord shall refund to Tenant the amount thereof within 30 days after such determination; and (C) on the first day of the month following the month in which such estimate is furnished to Tenant and monthly thereafter throughout such Operating Year Tenant shall pay to Landlord an amount equal to 1/12th of the Operating Payment shown on such estimate. Landlord may, during each Operating Year, furnish to Tenant a revised statement of Landlord's estimate of the Operating Payment for such Operating Year, and in such case, the Operating Payment for such Operating Year shall be adjusted and paid or refunded as the case may be, substantially in the same manner as provided in the preceding sentence.

(i) Landlord shall furnish to Tenant a Landlord's Statement for each Operating Year (and shall endeavor to do so within 270 days after the end of each Operating Year). If Landlord's Statement shall show that the sums paid by Tenant, if any, under Section 2.07(h) exceeded the Operating Payment to be paid by Tenant for the applicable Operating Year, Landlord shall refund to Tenant the amount of such excess within 30 days after such determination; and if the Landlord's Statement shall show that the sums so paid by Tenant were less than the Operating Payment to be paid by Tenant for such Operating Year, Tenant shall pay the amount of such deficiency within 30 days after demand therefor.

(j) (i) Tenant, upon notice given within 120 days after Tenant's receipt of a Landlord's Statement, may elect to have Tenant's designated (in such notice) representative (who may be an employee of Tenant or a third party accountant or consultant but who may not, in any case, be retained by Tenant on a contingency fee basis or any other fee basis by which such representative's compensation is based upon the amount refunded or credited by Landlord to Tenant as a result of such audit) examine such of Landlord's books and records (collectively, "Records") as are directly relevant to such Landlord's Statement, and Landlord shall provide access to the Records upon reasonable prior notice. As a condition to Tenant's right to review the Records, Tenant shall pay all sums required to be paid in accordance with the Landlord's Statement in question, without prejudice to its position. If Tenant shall not give such notice within such 120-day period, then such Landlord's Statement shall be conclusive and binding upon Tenant. Tenant and Tenant's employees, accountants and agents shall treat all Records as confidential, and, upon request by Landlord, shall confirm such confidentiality obligation in writing by executing a confidentiality agreement in the form attached hereto as Exhibit N.

(ii) Tenant, within 90 days after the date on which the Records are made available to Tenant, may send a notice ("Tenant's Statement") to Landlord that Tenant disagrees with the applicable Landlord's Statement, specifying in reasonable detail the basis for Tenant's disagreement and the amount of the Operating Payment Tenant claims is due. If Tenant fails timely to deliver a Tenant's Statement, then such Landlord's Statement shall be conclusive and binding on Tenant. Landlord and Tenant shall attempt to adjust such disagreement. If they are unable to do so and provided that the amount of the Operating Payment Tenant claims is due is substantially different from the amount of the Operating Payment Landlord claims is due, Tenant shall notify Landlord, within 90 days after the date on which the Records are made available to Tenant in connection with the disagreement in question, that such disagreement shall be determined by an Arbiter in accordance with this Section 2.07(j), and promptly thereafter Landlord and Tenant shall jointly designate a certified public accountant (the "Arbiter") whose determination made in accordance with this Section 2.07(j)(ii) shall be binding upon the parties; it being understood that if the amount of the Operating Payment Tenant claims is due is not substantially different from the amount of the Operating Payment Landlord claims is due, then Tenant shall have no right to protest such amount and shall pay the amount that Landlord claims is due to the extent not theretofore paid. If Tenant timely delivers a Tenant's Statement, the disagreement referenced therein is not resolved by the parties and Tenant fails to notify Landlord of Tenant's desire to have such disagreement determined by an Arbiter within the 90-day period set forth in the preceding sentence, then the Landlord's Statement to which such disagreement relates shall be conclusive and binding on Tenant. If the determination of the Arbiter shall substantially confirm the determination of Landlord, then Tenant shall pay the cost of the Arbiter. If the Arbiter shall substantially confirm the determination of Tenant, then Landlord shall pay the cost of the Arbiter. In all other events, the cost of the Arbiter shall be borne equally by Landlord and Tenant. The Arbiter shall be a member of an independent certified public accounting firm having at least 15 accounting professionals and shall have at least 10 years of experience in real estate accounting matters, and such Arbiter and the accounting firm with whom such Arbiter is affiliated shall be disinterested. If Landlord and Tenant shall be unable to agree upon the designation of the Arbiter within 15 days after receipt of notice from a party requesting agreement as to the designation of the Arbiter, which notice shall contain the names and addresses of two or more certified public accountants meeting the requirements of this Section 2.07(j)(ii) and who are acceptable to the party sending such notice, then either party shall have the right to request JAMS to designate as the Arbiter a certified public accountant meeting the requirements of this Section 2.07(j)(ii) whose determination made in accordance with this Section 2.07(j)(ii) shall be conclusive and binding upon the parties, and the cost of such certified public accountant shall be borne as provided above in the case of the Arbiter designated by Landlord and Tenant. Any determination made by an Arbiter shall not exceed the amount determined to be due in the first instance by Landlord's Statement, nor shall such determination be less than the amount claimed to be due by Tenant in Tenant's Statement, and any determination which does not comply with the foregoing shall be null and void and not binding on the parties. In rendering such determination such Arbiter shall not add to, subtract from or otherwise modify the provisions of this Lease, including the immediately preceding sentence. Pending the resolution of any contest pursuant to this Section 2.07(j)(ii), and as a condition to Tenant's right to prosecute such contest, Tenant shall pay all sums required to be paid in accordance with the Landlord's Statement in question, without prejudice to its position. If Tenant shall prevail in such contest, an appropriate refund shall be made by Landlord to Tenant within 30 days after such determination. The term "substantially" as used in this Section 2.07(j)(ii), shall mean a variance of 2% or more of the Operating Payment in question. If the Arbiter determines that Landlord overstated the actual amount of Operating Expenses for a particular Operating Year by more than five percent (5%) of the actual amount of Operating Expenses for such Operating Year, then in addition to the refund to which Tenant is entitled, Landlord shall reimburse Tenant for (or, at Landlord's option, Landlord shall credit against the Rent thereafter coming due under this Lease) the reasonable out-of-pocket costs actually paid to Tenant's auditor in connection with Tenant's audit of the Records within 30 days after Tenant gives to Landlord reasonable supporting documentation describing such costs.

**2.08 PILOT, Impositions, Tax and Operating Provisions.** (a) In any case provided in Sections 2.04, 2.05, 2.06 or 2.07 in which Tenant is entitled to a refund, Landlord may, in lieu of making such refund, credit against future installments of Rent any amounts to which Tenant shall be entitled. Nothing in this Article 2 shall be construed so as to result in a decrease in the Fixed Rent. If this Lease shall expire before any such credit shall have been fully applied, then (provided Tenant is not in default under this Lease) Landlord shall refund to Tenant the unapplied balance of such credit.

(b) Landlord's failure to render or delay in rendering a Landlord's Statement with respect to any Operating Year or any component of the Operating Payment shall not prejudice Landlord's right to thereafter render a Landlord's Statement with respect to any such Operating Year or any such component; provided, that such Landlord's Statement is delivered within 2 years after the end of the Operating Year in question, nor shall the rendering of a Landlord's Statement for any Operating Year prejudice Landlord's right to thereafter render a corrected Landlord's Statement for such Operating Year within such 2-year period. Landlord's failure to render or delay in rendering any statement with respect to any PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment (or installment thereof) shall not prejudice Landlord's right to thereafter render such a statement; provided, that such statement is delivered within 2 years following the later of (i) the end of the Tax Year in question or (ii) the final determination of the PILOT, Impositions or Taxes, as applicable, for the Tax Year in question, nor shall the rendering of a statement for any PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment (or installment thereof) prejudice Landlord's right to thereafter render a corrected statement therefor within such 2-year period.

(c) Landlord and Tenant confirm that the computations under this Article 2 are intended to constitute a formula for agreed rental escalation and may or may not constitute an actual reimbursement to Landlord for PILOT, Impositions, Taxes and other costs and expenses incurred by Landlord with respect to the Building.

(d) Each PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment in respect of a Tax Year, and each Operating Payment in respect of an Operating Year, which ends after the expiration or earlier termination of this Lease, and any PILOT, Impositions or Taxes refund with respect to such a Tax Year, shall be prorated to correspond to that portion of such Tax Year or Operating Year occurring within the Term.

**2.09 Electric Charges.** (a) Tenant's demand for, and consumption of, electricity serving the Premises shall be determined by meters or submeters, the first installation of which shall be at Landlord's expense with respect to one meter or submeter per floor of the Premises and any additional or subsequent installations of which shall be at Tenant's expense, it being understood, however, that in all cases such meters and submeters shall be maintained by Landlord as an Operating Expense. Such meters or submeters shall be capable of providing information regarding both the aggregate KWH of consumption for the Premises and the total coincidental demand for the Premises in KW (treated as if such demand were measured by a single meter), and shall be billed as if there was only one (1) meter in the Premises. Tenant shall pay for electric consumption as provided in this Section 2.09 within 30 days after rendition of a bill therefor, which shall be rendered by or on behalf of Landlord and may not be rendered more frequently than once per month.

(b) The amount payable by Tenant per "KW" and "KWH" for electricity consumed within the Premises, whether determined by meters or submeters or as otherwise provided below, shall be 103% of the amount (as adjusted from time to time, "Landlord's Rate") which would be charged to Landlord from time to time, as determined in accordance with the terms of this Section 2.09(b), for the purchase of each KW and KWH of electricity for the same period by Con Edison or any successor thereto (including all surcharges, taxes, fuel adjustments, market supply and market adjustment charges, taxes passed on to consumers by the public utility, and other sums payable in respect thereof), plus all surcharges, taxes and other sums payable in respect of Landlord's sale of electricity to Tenant and Landlord's actual out-of-pocket third party costs for meter reading and billing. Landlord's Rate shall be determined by applying KW and KWH (on-peak and off-peak, if applicable) as derived from Tenant's meters or submeters to the same rate schedule(s) (both the utility and alternate provider, if applicable) which would be charged by Con Edison during each respective service period if the Building did not have a co-generation facility and purchased all electricity consumed in the Building from Con Edison. Electricity shall be billed as if there was only one (1) meter in the Premises. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to apply Tenant's interval data to Landlord's Rate to determine the amount payable by Tenant hereunder.

(c) Notwithstanding anything to the contrary contained in this Lease, the base building air handlers serving the Premises and Tenant's overhead HVAC distribution system shall each be connected to submeters measuring Tenant's use of electricity in the Premises and Tenant shall pay all electricity costs in connection with the use of such equipment in accordance with this Section 2.09.

**2.10 Manner of Payment.** Tenant shall pay all Rent as the same shall become due and payable under this Lease (a) in the case of Fixed Rent and Recurring Additional Charges, by wire transfer of immediately available federal funds as directed in writing by Landlord, and (b) in the case of all other sums, either by wire transfer as aforesaid or by check (subject to collection) drawn on a bank that clears through The Clearing House Payments Company L.L.C., in each case at the times provided herein without notice or demand and without setoff or counterclaim. All Rent shall be paid in lawful money of the United States to Landlord at its office or such other place as Landlord may from time to time designate in writing. If Tenant fails timely to pay any Rent, Tenant shall pay interest thereon from the date when such Rent became due to the date of Landlord's receipt thereof at the Interest Rate. If Tenant fails to timely pay any installment of Fixed Rent or Recurring Additional Rent on 2 occasions within any rolling 365-day period, in addition to all other rights and remedies Landlord may have under this Lease and the payment of interest as provided in the immediately preceding sentence, Tenant shall pay to Landlord, as Additional Charges, together with such 2<sup>nd</sup> late payment of Fixed Rent or Recurring Additional Rent (and any subsequent late payment of Fixed Rent or Recurring Additional Rent within any such 365-day period), a fee in the amount of 2% of the amount of the late Fixed Rent or Recurring Additional Rent payment in order to defray Landlord's costs in connection with Tenant's late payment of Fixed Rent or Recurring Additional Rent. Tenant shall pay interest on such fee at the Interest Rate from the date the applicable late payment of Fixed Rent or Recurring Additional Rent was due until the date of Landlord's receipt of such fee. Any Additional Charges for which no due date is specified in this Lease shall be due and payable on the 30th day after the date of invoice. Subject to the foregoing, whenever this Lease shall provide that Landlord or Tenant shall pay the out-of-pocket costs of the other party, the party seeking reimbursement of such out-of-pocket costs shall deliver to the requesting party bills, receipts, invoices or other reasonable supporting documentation reasonably evidencing such costs.

**2.11 Security.** (a) Within 30 days of the date of this Lease, Tenant shall deliver to Landlord, as security for the performance of Tenant's obligations under this Lease, an unconditional, irrevocable letter of credit (the "Letter of Credit") in the amount of \$3,528,735.00 (the "Required Letter of Credit Amount") in the form of Exhibit O attached hereto and issued by Citibank, N.A., permitting multiple and partial draws thereon. The Letter of Credit shall provide that it is assignable by Landlord without charge and shall either (x) expire on the date which is 60 days after the expiration or earlier termination of this Lease (the "LC Date") or (y) be automatically self-renewing until the LC Date. Tenant shall be responsible for paying the issuer's assignment, transfer and processing fees in connection with any assignment or transfer of the Letter of Credit and, if Landlord advances any such fees (without having any obligation to do so), Tenant shall reimburse Landlord for any such transfer or processing fees within 30 days after Landlord's written request therefor. If any Letter of Credit is not renewed at least 30 days prior to the expiration thereof or if Tenant holds over in the Premises without the consent of Landlord after the expiration or termination of this Lease, Landlord may draw upon the Letter of Credit and hold the proceeds thereof as security for the performance of Tenant's obligations under this Lease. Landlord may draw on the Letter of Credit (or the proceeds thereof) to remedy defaults by Tenant beyond applicable notice and cure periods in the payment or performance of any of Tenant's obligations under this Lease. If Landlord shall have so drawn upon the Letter of Credit (or the proceeds thereof), Tenant shall promptly upon demand deliver to Landlord a replacement Letter of Credit or an amendment to the Letter of Credit such that the Letter of Credit shall be in the amount of the Required Letter of Credit Amount.

(b) Provided Tenant is not in default under this Lease and Tenant has surrendered the Premises to Landlord in accordance with all of the terms and conditions of this Lease, within 5 Business Days after the LC Date: (i) Landlord shall return to Tenant the Letter of Credit (or the proceeds thereof) then held by Landlord or (ii) if Landlord shall have drawn upon such Letter of Credit (or the proceeds thereof) to remedy defaults by Tenant in the payment or performance of any of Tenant's obligations under this Lease, Landlord shall return to Tenant that portion, if any, of the proceeds of the Letter of Credit remaining in Landlord's possession.

### **ARTICLE 3**

#### **Landlord Covenants**

**3.01 Landlord Services.** From and after the date that Tenant first occupies the Premises for the conduct of Tenant's business, Landlord shall furnish Tenant with the following services (collectively, "Landlord Services"):

(a) heat, ventilation and air-conditioning to the Premises during Business Hours substantially in accordance with the design specifications set forth in Exhibit F attached hereto; if Tenant shall require heat, ventilation or air conditioning at any other times, Landlord shall furnish such service (i) in the case of a Business Day, upon receiving notice from Tenant by 1:00 p.m. of such Business Day and (ii) in the case of a day other than a Business Day, upon receiving notice from Tenant by 5:00 p.m. of the immediately preceding Business Day, and Tenant shall pay to Landlord within 30 days after demand Landlord's then established charges therefor, which charges shall be calculated in accordance with Exhibit H attached hereto and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such services; provided, that Tenant shall be subject to a 4 hour minimum charge for any such overtime service unless such overtime service is requested for a period of time immediately preceding or immediately following Business Hours on a Business Day, in which case Tenant shall be entitled to request a minimum of 1 full hour of such overtime service;

(b) (i) subject to service changes due to emergency and necessary maintenance, for Tenant's non-exclusive use and benefit, destination dispatch passenger elevators serving the Premises (the "Elevators") in accordance with the specifications attached hereto as Exhibit G at all times during Business Hours on Business Days, with at least 2 Elevators subject to call at all other times;

(ii) subject to the Rules and Regulations, freight elevator and loading dock service to the Premises for Tenant's non-exclusive use and benefit; provided, that with respect to such service other than during Business Hours on Business Days, (A) Tenant shall pay to Landlord within 30 days after demand Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto and shall be Subject to CPI Increases and (B) Tenant shall be subject to a 4 hour minimum charge unless such overtime service is requested for a period of time immediately preceding or immediately following Business Hours on a Business Day, in which case Tenant shall be entitled to request a minimum of 1 full hour of such overtime service. Notwithstanding the foregoing, during the performance of Tenant's Initial Work and Tenant's initial move-in to the Premises, (1) Tenant shall be entitled to up to 50 overtime hours in the aggregate of freight elevator and loading dock service at no charge and (2) the charges for Tenant's use of freight elevator and loading dock service shall be as more particularly described in Section 4.01(c)(v);

(c) reasonable quantities of hot and cold water to the floor(s) on which the Premises are located for core lavatory, cleaning, drinking and cold water for pantry (other than dishwashers and subject to Section 8.20(b)(v), it being agreed that the heating of water supplied to the pantry, together with the cost thereof, including electricity, shall be the sole responsibility of Tenant) purposes only; if Tenant requires additional water for any other purpose, Landlord shall furnish cold water at the Building core riser through a capped outlet located on each floor on which the Premises is located (within the core of the Building), and the cost of heating such water (including, without limitation, the cost of electric to heat such water) and the cost of piping and supplying such water to the Premises shall be paid by Tenant (provided that Landlord shall install and maintain hot water heaters for the core toilet rooms and janitors closets); Landlord may install and maintain, at Tenant's expense, meters to measure Tenant's consumption of such additional water in which event Tenant shall reimburse Landlord for the quantities of water shown on such meters, within 30 days after demand accompanied by reasonable supporting documentation, at Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such water;

(d) electric energy on a submetered basis through the transmission facilities installed by Landlord in the Building for Tenant's reasonable use of lighting and other electrical fixtures, appliances and equipment at a level of not less than 5 watts demand load per gross square foot of space (exclusive of electricity required to operate the base building systems installed by Landlord, including, without limitation, the Building HVAC system, but inclusive of any Tenant installed portion of the HVAC distribution system such as fan powered boxes); in no event shall Tenant's consumption of electricity exceed the capacity of existing feeders to the Building or the risers or wiring serving the Premises, nor shall Tenant be entitled to any unallocated power available in the Building. Tenant shall not have the right to redistribute the electric power furnished on each floor of the Premises by Landlord throughout the Premises without Landlord's prior written approval (such approval to be granted or denied in Landlord's sole and absolute discretion); provided, that, if Landlord approves same, (1) such redistribution shall not cause Tenant's consumption of electricity to exceed the capacity of the feeders, risers or wiring serving the Premises, (2) Tenant, at Tenant's sole expense, shall perform any work required prior to the expiration or earlier termination of the Term so that the electrical capacity stated in this Section 3.01(d) is restored to each floor of the Premises and (3) if Tenant shall surrender any portion of the Premises prior to surrendering the entire Premises, Tenant, at Tenant's sole expense, shall perform any work required prior to such partial surrender so that the electrical capacity stated in this Section 3.01(d) is restored to the surrendered portion of the Premises;

(e) cleaning services for the Premises in accordance with the specifications provided in Exhibit D attached hereto. Tenant shall pay to Landlord within 30 days after demand the out-of-pocket costs incurred by Landlord for (i) extra cleaning work in the Premises required because of (A) carelessness, indifference, misuse or neglect on the part of Tenant, its subtenants or their respective employees or visitors, (B) interior glass partitions or an unusual quantity of interior glass surfaces, (C) non-standard materials or finishes installed in the Premises and/or (D) the use of the Premises other than during Business Hours on Business Days, and (ii) removal from the Premises and the Building of any refuse of Tenant in excess of that ordinarily accumulated in business office occupancy, including, without limitation, kitchen and pantry refuse, or at times other than Landlord's standard cleaning times. Notwithstanding the foregoing, Landlord shall not be required to clean any portions of the Premises used for preparation, serving or consumption of food or beverages, training rooms, trading floors, data processing or reproducing operations, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas and Tenant shall retain Landlord's cleaning contractor at Tenant's expense to perform such cleaning and any other cleaning services in excess of those provided for in Exhibit D. Notwithstanding the foregoing, Tenant may use its own employees to provide minor cleaning services to pantries and conference rooms within the Premises; provided, that (A) the provisions of Section 4.02(e) relating to the avoidance of union-related conflict shall apply to such minor cleaning services, (B) Landlord shall have no liability to Tenant or Tenant's employees in connection with such minor cleaning services and (C) any such minor cleaning services shall be subject to such reasonable rules and regulations that may be established by Landlord with respect thereto (including, without limitation, Landlord's green cleaning policy for the Building). Landlord's cleaning contractor shall have access to the Premises after 6:00 p.m. and before 8:00 a.m. and shall have the right to use, without charge therefor, all light, power and water in the Premises reasonably required to clean the Premises;

(f) up to 30 tons of condenser water for the Premises (i.e., 20 tons for the 37th Floor Premises and 10 tons for the 40th Floor Premises) for Tenant's supplemental HVAC system from the common cooling tower unit serving the Building 24 hours a day, 7 days a week, which Landlord shall reserve for Tenant's use until January 1, 2017 (the "Reserved Tonnage"). Tenant shall have the right to use, throughout the Term, that portion of the Reserved Tonnage which Tenant has elected to reserve as of January 1, 2017, it being agreed that Tenant waives any rights Tenant may have had (x) to the Reserved Tonnage if Tenant has not given Landlord notice of its election to reserve the same on or before January 1, 2017 and (y) to the portion of the Reserved Tonnage which Tenant has not elected to reserve in such election notice given to Landlord on or before January 1, 2017 (if any is so given). Tenant shall perform all necessary work and install all required equipment to permit Tenant to tap into Landlord's condenser water riser (provided that Landlord shall provide capped valved outlets), and Landlord shall waive any tap-in fee or "drain-down" charge for Tenant's tap into Landlord's condenser water riser. Tenant shall pay to Landlord, within 30 days after demand, for such reservation of condenser water, an amount equal Landlord's then established charges therefor, which charges as of the date hereof are \$850 per ton reserved per annum and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such condenser water. Subject to Laws and Landlord's approval of Tenant's plans therefor, Tenant shall have the right, at Tenant sole cost and expense, to redistribute the condenser water furnished on each floor of the Premises throughout the Premises (it being agreed that condenser water is being allocated on the basis of 20 tons for the 37th Floor Premises and 10 tons for the 40th Floor Premises); provided, that if Tenant shall surrender the Premises (or any portion of the Premises prior to surrendering the entire Premises, including without limitation the 40th Floor Premises on the 40th Floor Expiration Date), Tenant shall perform any work required prior to such surrender (or such partial surrender) so that the condenser water capacity stated in this Section 3.01(f) is restored to the Premises (or the surrendered portion of the Premises);

(g) (i) security in accordance with Exhibit L attached hereto; provided, that, except to the extent due to Landlord's negligence or willful misconduct, Landlord shall have no responsibility to prevent, and Landlord shall have no liability to Tenant (or anyone claiming through or under Tenant) for loss to Tenant (or such other person) or their agents, contractors, employees, invitees, or licensees, arising out of theft, burglary or damage or injury to persons or property caused by persons gaining access to the Building or other causes;

(ii) Tenant shall have the right, at Tenant's sole cost and expense, to install a security system (which may be, at Tenant's option, a key-card access system) in the Premises; provided that Tenant shall provide Landlord's security personnel with any key-cards, information or other items required to access the Premises in accordance with the provisions of Section 4.04(d). If Tenant desires to install a security system in the Premises that is compatible with the Building security system so as to enable individuals to utilize a single security/access card to access both the ground floor elevator lobby serving the Premises and the Premises, Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, with respect to Tenant's installation and maintenance of such compatible security system;

(iii) Landlord shall provide access cards for entry to the ground floor elevator lobby serving the Premises and Tenant shall pay to Landlord, within 30 days after demand therefor, Landlord's established charges therefor. Notwithstanding the foregoing, Landlord shall provide, without charge, 1 such access card for each employee of Tenant with a place of work in the Premises as of the date that Tenant first occupies the Premises for the conduct of Tenant's business;

(h) Landlord shall operate (or cause an outside contractor to operate) a messenger center for the Building (the "Messenger Center"). The service to be provided by the Messenger Center from time to time, the manner in which such services are provided from time to time and hours of operation observed from time to time (the "Messenger Center Services") shall comply with all applicable Laws and shall be reasonably formulated by Landlord with a view toward the security protocols for the Building. Tenant shall, throughout the Term, use, in common with Landlord and other tenants and occupants of the Building, the Messenger Center and the Messenger Center Services. Landlord shall have the right, from time to time, to make such modifications to the Messenger Center Services as it deems reasonably necessary, taking into account requirements of applicable Laws and the security of the Building and its tenants and other occupants. Landlord reserves the right to reconfigure or relocate the Messenger Center. Landlord shall have no liability to Tenant for accepting or failing to accept or for providing or not providing or for requesting or failing to request receipts or evidence of delivery for any mail or packages or for the handling of, or damage to, such mail or packages absent the gross negligence or willful misconduct of Landlord. The cost of maintaining the Messenger Center and Messenger Center Services shall be an Operating Expense under this Lease;

(i) intentionally omitted;

(j) subject to Landlord's security procedures and the provisions of this Lease, access to the Premises 24 hours per day, 7 days per week except in cases of emergency;

(k) operation, maintenance and repair of the public and common areas of the Building and of the systems and equipment serving the Building, and the provision of services required hereunder, in a manner consistent with standards maintained in First Class Office Buildings (it being understood that any specifications for the provision of services required hereunder included in this Lease or the exhibits attached hereto shall be deemed to meet such standards); provided, that Landlord's obligations under this Section 3.01(k) shall be limited to areas of, and systems and equipment within, the Building which Tenant is entitled to use or which otherwise serve the Premises and Landlord shall have no liability to Tenant for any failure to maintain such standards except to the extent such failure adversely affects Tenant's use and enjoyment of the Premises;

(l) emergency power through the emergency generator(s) for the Building sufficient to make operational all base building systems serving the Premises which are required by applicable Laws to be operational for emergency power, including exit lights and egress illumination, fire pumps, smoke exhaust systems, stair pressurization and the fire alarm system;

(m) water pressure and reserve capacity to the fire sprinkler system serving the Premises at the levels required pursuant to the Building Code for the City of New York; and

(n) a fire alarm and life safety system, including a "DGP" on the 38th floor of the Building for Tenant's connections to such life safety system.

**3.02 General Service Provisions.** (a) Subject to the provisions hereinafter set forth, Landlord may stop or interrupt any Landlord Service, electricity, or other service and may stop or interrupt the use of any facilities and systems at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations or improvements or the performance of maintenance, or inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, or by reason of any other cause beyond the reasonable control of Landlord. Landlord may modify the delivery and scope of any services if required by reason of any Laws. Landlord shall have no liability to Tenant by reason of any stoppage, interruption or modification of any Landlord Service, electricity or other service or the use of any facilities and systems for any reason except as otherwise expressly provided in Section 3.02(d). Landlord shall use reasonable diligence (which shall not include incurring overtime charges) to make such repairs as may be required to machinery or equipment within Landlord's control to provide restoration of any Landlord Service and, where the cessation or interruption of such Landlord Service has occurred due to circumstances or conditions beyond Landlord's control, to cause the same to be restored by diligent application or request to the provider; provided, however, that Landlord, at its expense (subject to reimbursement through Operating Expenses in accordance with the terms of this Lease, so that, for example, if same is a capital expenditure, it shall be amortized in accordance with the terms of Section 2.07(d)), shall employ contractors or labor at overtime rates if necessary to remedy any condition that either (i) results in a denial of reasonable access to the Premises or (ii) is required to respond to an emergency involving imminent threat to life or property. In all other cases, at Tenant's written request, Landlord shall employ contractors or labor at overtime rates and incur any other overtime costs or expenses in making any repairs, alterations, additions or improvements, provided Tenant shall pay to Landlord, as Additional Charges, within 30 days after demand, an amount equal to the excess of (a) the overtime rates, including all fringe benefits and other elements of such pay rates, over (b) the regular pay rates for such labor, including all fringe benefits and other elements of such pay rates. Notwithstanding the foregoing, any such work that unreasonably and materially interferes with Tenant's business operations in the Premises and that would customarily be performed after Business Hours or on non-Business Days by landlords of First Class Office Buildings shall be performed after Business Hours or on non-Business Days at no cost to Tenant (subject to reimbursement through Operating Expenses in accordance with the terms of this Lease). In making any repairs, alterations, additions or improvements, Landlord shall use commercially reasonable efforts to cause its contractors or labor to cover and secure such repair areas and equipment in such a manner to minimize interference with Tenant's business operations during Business Hours. If more than one occupant of the Building, including Tenant, is chargeable by Landlord for the same overtime costs and expenses relating to the same work for which Tenant is chargeable, then Tenant shall only be charged for a proportionate share of such overtime costs and expenses, which apportionment shall be based on the amount of overtime work requested by such parties.

(b) Without limiting any of Landlord's other rights and remedies, if Tenant shall be in default beyond any applicable notice and grace period, Landlord shall not be obligated to furnish to the Premises any service outside of Business Hours on Business Days, and Landlord shall have no liability to Tenant by reason of any failure to provide, or discontinuance of, any such service; provided, that if Tenant shall tender full payment in advance, by certified or bank check or by wire transfer of immediately available funds, for any such service, then Landlord shall furnish such service to the Premises in accordance with the provisions of this Article 3.

(c) "Business Hours" means 8:00 a.m. to 6:00 p.m. on Business Days and 9:00 a.m. to 1:00 p.m. on Saturdays. "Business Days" means all days except (a) Saturdays, (b) Sundays and (c) Holidays. "Holidays" means New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving, Christmas and any other days which are either (i) observed by both the federal and the state governments as legal holidays or (ii) designated as a holiday by the Building Service Union Employee Service contract.

(d) If without the fault or neglect of Tenant or any person claiming through or under Tenant, any Substantial Portion of the Premises is rendered Untenantable for a period of 5 consecutive Business Days after Tenant shall have notified Landlord of such Untenantability, by reason of any stoppage or interruption of any Landlord Service due to a default by Landlord in the performance of any obligation of Landlord pursuant to the provisions of this Lease, then, as Tenant's sole and exclusive remedy, for the period commencing on the 6<sup>th</sup> Business Day after Tenant's giving notice to Landlord that such Substantial Portion of the Premises is so Untenantable until such Substantial Portion of the Premises is no longer Untenantable for such reason, Fixed Rent and Additional Charges shall be appropriately abated with respect only to such Substantial Portion. "Untenantable" means that Tenant shall be unable to use the Premises or the applicable portion thereof for general, administrative or executive office uses (including due to lack of access through the elevators serving the Premises), and shall not be using the Premises for any use. "Substantial Portion" shall mean any portion of the Premises consisting of 10,000 or more contiguous rentable square feet.

(e) No normally operating equipment installed by Landlord shall generate an ambient noise level in excess of NC-35 within the Premises (except within 10'-0" of any fan rooms or other mechanical equipment room in the Premises where it will not exceed NC-40); provided that Landlord shall have no responsibility for noise resulting from Tenant's Alterations, installations or equipment.

**3.03 Landlord's Contribution.** (a) Landlord shall reimburse Tenant (or, at Tenant's request, pay directly to Tenant's general contractor or construction manager) for costs incurred by Tenant for Tenant's Initial Work performed within 3 years after the Commencement Date (the "Work Reimbursement Period") up to (and in no event in excess of) an amount (the "Work Allowance") equal to \$125.00 per rentable square foot of the Premises initially demised under this Lease, upon the following terms and conditions:

(A) The Work Allowance shall be payable to Tenant (or to Tenant's general contractor or construction manager, as directed by Tenant) in installments as Tenant's Initial Work progresses, but in no event more frequently than monthly. Installments of the Work Allowance shall be payable by Landlord within 30 days following Tenant's satisfaction of (or substantial compliance to Landlord's reasonable satisfaction with) each of the conditions required for disbursement set forth in this Section 3.03(a), it being understood that minor or insubstantial deviations from any documentary requirements included in said conditions that are otherwise reasonably satisfactory to Landlord shall not result in a withholding of the installment of the Work Allowance requested by Tenant.

(B) Prior to the payment of any installment, Tenant shall deliver to Landlord a request for disbursement (each being hereinafter called a "Tenant Requisition"), which shall be accompanied by (1) invoices for Tenant's Initial Work performed or incurred since the last Tenant Requisition and disbursement of the Work Allowance, (2) a certificate signed by Tenant's architect and an officer of Tenant certifying that to such architect's and officer's knowledge, Tenant's Initial Work and services represented by the aforesaid invoices have been satisfactorily completed in substantial accordance with the plans and specifications therefor approved by Landlord to the date of such certification, and have not been the subject of a prior disbursement of the Work Allowance, and (3) lien waivers by architects, contractors, subcontractors and all materialmen for all such work and services (it being understood and agreed that conditional lien waivers shall be delivered for work which is the subject of Tenant Requisition in question and unconditional lien waivers shall be delivered for all completed work which was the subject of the previous Tenant Requisition). If any matter concerning a Tenant Requisition is disputed by Landlord, any undisputed portion thereof shall be funded by Landlord without limiting Landlord's rights to dispute the disputed portion, and such dispute with respect to such disputed portion shall be resolved by arbitration in accordance with the provisions of Section 8.09. Each installment payment of the Work Allowance shall be limited to an amount equal to the amount requested by Tenant pursuant to clause (1) of this paragraph. In addition, if the amount requested by Tenant does not already reflect the Minimum Retainage against the amount requested by the applicable contractor or subcontractor, then Landlord shall be permitted to retain from each disbursement an amount equal to the Minimum Retainage of the amount requested to be disbursed by Tenant. "Minimum Retainage" means (1) 10% until at least 50% of Tenant's Initial Work is substantially complete and paid for and (2) 5% thereafter.

(C) Tenant is not then in default under this Lease.

(D) In no event shall more than 15% of the Work Allowance be made available to Tenant for Tenant's soft costs of construction (including, without limitation, filing and permit fees and expenses, architecture, engineering and other consulting fees and expenses and moving expenses).

(b) "Tenant's Initial Work" means the alterations, installations and improvements to be performed by Tenant in the Premises to prepare the same for initial occupancy thereof. Landlord and Tenant each acknowledge and agree that Landlord has engaged Spector Group, Lilker and HDLC in connection with Tenant's Initial Work. Landlord shall directly pay the costs of such contractors and any other architects, engineers, expeditors, consultants and contractors mutually agreed by Landlord and Tenant to be hired by Landlord in connection with Tenant's Initial Work and Tenant shall reimburse Landlord for any such actual out-of-pocket costs and expenses incurred by Landlord in connection therewith; it being agreed that Landlord shall directly pay the costs of any such contractors, architects, engineers, expeditors, consultants and contractors and any other costs and expenses that Tenant is expressly required to reimburse Landlord for hereunder in connection with Tenant's Initial Work (e.g., overtime freight elevator charges and any temporary water, power, heat and air and connections under Section 4.01(c)(v)) from the Work Allowance. The Work Allowance shall not be utilized by Tenant to purchase any furniture for the Premises or for any audio/video work performed by Tenant in connection with Tenant's Initial Work.

(c) The right to receive reimbursement for the cost of Tenant's Initial Work as set forth in this Section 3.03 shall be for the exclusive benefit of Tenant, it being the express intent of the parties hereto that in no event shall such right be conferred upon or for the benefit of any third party, including, without limitation, any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or any other person, firm or entity. Without in any way limiting the provisions of Section 6.12(b), Tenant shall indemnify and hold harmless each Landlord Indemnified Party from and against any and all liability, damages, claims, costs or expenses arising out of or relating to Landlord's payment of any installment of the Work Allowance directly to Tenant's general contractor or construction manager, together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and expenses.

(d) Tenant shall not be entitled to deliver a Tenant Requisition for a disbursement of any portion of the Work Allowance later than the date that is 60 days after the last day of the Work Reimbursement Period (the "Outside Requisition Date") and if Tenant shall fail to deliver a Tenant Requisition for a disbursement in connection with any Tenant's Initial Work by the Outside Requisition Date, then Tenant shall waive Tenant's right to receive any payment in connection therewith.

(e) If Tenant satisfies all of the conditions to payment of the Work Allowance in accordance with this Section 3.03 and Landlord fails to pay to Tenant any amount of the Work Allowance (subject to Landlord's right to directly pay certain costs to be reimbursed by Tenant to Landlord from the Work Allowance as more particularly described in Section 3.03(b) above) on or before the date on which the same is due and payable to Tenant under this Section 3.03, and provided that such failure continues for 30 days after Tenant notifies Landlord of such failure (which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: "**THIS IS A NOTICE OF A CLAIMED OFFSET RIGHT GIVEN IN ACCORDANCE WITH SECTION 3.03(e) OF THE LEASE**"), then, subject to the further provisions of this Section 3.03(e), Tenant may set off such amount against the next installments of Rent coming due under this Lease. Landlord shall have the right within such 30-day period to deliver written notice to Tenant that Landlord disputes, in good faith, Tenant's entitlement to the amount claimed by Tenant, together with a reasonably detailed explanation of the reasons therefor, it being agreed that if Landlord timely delivers such written notice, then Tenant shall not have the right to set off such amounts until the dispute is resolved in accordance with the further provisions of this Section 3.03(e). If Landlord fails to deliver such written notice to Tenant within such 30-day period, Landlord shall be deemed to have accepted Tenant's entitlement to the amount claimed by Tenant. In the event Landlord does deliver such written notice to Tenant within such 30-day period as provided above, the parties shall, in good faith, resolve such dispute(s) in a timely manner. Either party may submit any such dispute that remains unresolved for more than 30 days to arbitration in accordance with the provisions of Section 8.09. Any other dispute with respect to the payment of the Work Allowance shall also be resolved by arbitration in accordance with the provisions of Section 8.09. If any such dispute is resolved in favor of Tenant, then the amount in dispute shall be paid to Tenant within 10 days after the determination of the arbitrator, failing which Tenant may give to Landlord 5 Business Days notice of Tenant's intent to offset the amount due to Tenant against the next installments of Rent due under this Lease (which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: "**THIS IS A NOTICE OF A CLAIMED OFFSET RIGHT GIVEN IN ACCORDANCE WITH SECTION 3.03(e) OF THE LEASE**") and if Landlord does not, within such 5 Business Day period, pay such amount to Tenant, then Tenant may set off such amount against the next installments of Rent coming due under this Lease.

**3.04 Governmental Incentives.** Landlord shall cooperate in all reasonable respects with Tenant's efforts to obtain any available governmental and quasi-governmental benefits, incentives or entitlements; provided, that (i) such efforts shall not adversely affect the ability or eligibility of Landlord or other tenants or occupants of the Building and (ii) Tenant shall, within 30 days after receipt of each of Landlord's invoices therefor, reimburse Landlord for the actual out-of-pocket costs incurred by Landlord in connection with such cooperation. In no event shall Landlord have any liability, nor shall Tenant's obligations under this Lease be affected, in the event that Tenant shall not obtain any particular governmental or quasi-governmental benefits, incentives or entitlements.

#### **ARTICLE 4**

##### **Leasehold Improvements; Tenant Covenants**

**4.01 Initial Improvements.** (a) Landlord's Work. (i) Prior to the date hereof, Tenant acknowledges and agrees that Landlord performed or caused to be performed the work required to satisfy the Delivery Condition. Landlord, at Landlord's expense, shall perform or cause to be performed the work required to satisfy the Post Delivery Condition. The "Delivery Condition" means the condition of the Premises which satisfies the criteria set forth on Exhibit E-1 attached hereto. The portion of Landlord's Work described on Exhibit E-1 attached hereto is referred to as "Landlord's Turnover Work". The "Post Delivery Condition" means the condition of the Premises which satisfies the criteria set forth on Exhibit E-2 attached hereto. The portion of Landlord's Work described on Exhibit E-2 attached hereto is referred to as "Landlord's Post Turnover Work". Landlord's Turnover Work and Landlord's Post Turnover Work, collectively or individually, as the context requires, is referred to as "Landlord's Work".

(ii) "Substantial Completion" or "Substantially Complete" means that the work in question has been completed, or would have been completed but for any Tenant Delay, except for (a) minor or insubstantial details of construction, decoration and mechanical adjustments, the non-completion of which will not materially and adversely interfere with Tenant's performance of Tenant's Work and (b) any work which, in accordance with good construction practice, should be completed after the completion of other work to be performed by Tenant (the items described in clauses (a) and (b) are, collectively, the "Punch List Items").

(iii) "Tenant Delay" means any actual delay which Landlord may encounter in the performance of Landlord's Post Turnover Work or other obligations of Landlord under this Lease by reason of any act, negligence, failure to act (where the provisions of this Lease or Laws impose a duty to act) or omission of Tenant or any Tenant's Contractors or any of such parties' agents, employees or contractors, including, without limitation, delays due to changes in or additions to Landlord's Work requested by Tenant, delays by Tenant in submission of information or giving authorizations or approvals or delays due to the postponement of any Landlord's Work at the request of Tenant; provided however, that all simultaneous delays which constitute a Tenant Delay hereunder shall be deemed to run concurrently and not consecutively and shall not be "double" counted. Tenant shall pay to Landlord any additional costs or expenses actually incurred by Landlord by reason of any Tenant Delay. Notwithstanding anything to the contrary contained in this Agreement, except to the extent Tenant has (or is deemed to have) knowledge of a Tenant Delay as evidenced by job minutes, correspondence (which may be via email), memoranda or other writings furnished to or issued by Tenant (which job minutes, correspondence, memoranda or other writings specifically refer to such circumstances giving rise to a Tenant Delay and to the fact of a Tenant Delay), Landlord shall notify Tenant of any Tenant Delay within 5 Business Days after Landlord actually becomes aware of such Tenant Delay (and such notice shall specify in reasonable detail the cause of the delay), failing which such delay shall constitute a Tenant Delay only from and after the date Landlord notifies Tenant thereof. In addition and notwithstanding any other provision of this Lease to the contrary, in the event of any simultaneous occurrence of Tenant Delay and Unavoidable Delay, for the duration of any such simultaneous occurrence such Tenant Delay shall be deemed to be Unavoidable Delay; provided, that Landlord does not incur any additional costs or expenses by reason of such Tenant Delay that Landlord would not have otherwise incurred as a result of such simultaneous Unavoidable Delay.

(iv) When Landlord believes that Landlord's Post Turnover Work (or any item thereof set forth on Exhibit E-2 attached hereto), as applicable, is, or is about to be, Substantially Complete, Landlord shall deliver a notice to Tenant (a "Substantial Completion Notice") stating that Landlord believes that such applicable portion of Landlord's Post Turnover Work is, or is about to be, Substantially Complete, and setting forth a date (the "Walk-Through Date"), not less than 5 Business Days after the giving of such notice, for the parties to conduct a joint inspection of such portion of Landlord's Post Turnover Work. On the Walk-Through Date, Landlord and Tenant and their respective consultants shall jointly inspect such portion of Landlord's Post Turnover Work to determine if such portion of Landlord's Post Turnover Work is Substantially Complete. Within 3 Business Days after such walk-through, Tenant shall deliver a written notice to Landlord (the "Tenant Inspection Notice"), which notice shall either (x) confirm Tenant's agreement that Landlord's Post Turnover Work (or such portion thereof) is Substantially Complete and specify in reasonable detail any Punch List Items yet to be completed, or (y) dispute the occurrence of Substantial Completion of Landlord's Post Turnover Work, specifying in reasonable detail all items of work asserted to be incomplete which result in Landlord's Post Turnover Work not being Substantially Complete (provided that the mere fact that Tenant concludes that Substantial Completion has not occurred shall not mean that Substantial Completion has not occurred). If, in the Tenant Inspection Notice, (i) Tenant concurs that Landlord's Post Turnover Work is Substantially Complete, Tenant shall be deemed to have accepted Landlord's Post Turnover Work and Landlord shall have no further obligation to perform any work, supply any materials, or make any alterations or improvements to prepare the Premises for Tenant's occupancy, subject to Landlord's completion of any Punch-List Items, which Landlord shall proceed with reasonable diligence to complete and any Latent Defects, which Landlord shall proceed with reasonable diligence to remedy in accordance with the further provisions of this Section 4.01(a)(iv), or (ii) Tenant concludes that Landlord's Post Turnover Work is not Substantially Complete, Tenant shall be deemed to concur that any item of work not specified and listed as incomplete in the Tenant Inspection Notice is completed for all purposes of this Section 4.01 and this Lease. If Tenant fails to appear on the Walk-Through Date, or if the parties conduct a joint inspection of Landlord's Post Turnover Work and Tenant fails within two (2) Business Days after such inspection to deliver to Landlord the Tenant Inspection Notice containing the information required pursuant to clauses (x) or (y) of this Section 4.01(a)(iv)(2) (as applicable), then in either such case Tenant shall be deemed to have concurred that Landlord's Post Turnover Work has been fully completed as of the date set forth as the date of Substantial Completion in the Substantial Completion Notice and Tenant shall be deemed to have accepted delivery of possession of the Premises and Landlord's Post Turnover Work therein and Landlord shall have no further obligation to perform any work, supply any materials, or make any alterations or improvements to prepare the Premises for Tenant's occupancy. For the purposes of this Lease, "Latent Defects" shall mean defects in the construction of Landlord's Work that are not observable by visible inspection at the time the Punch List is prepared. Landlord shall remedy any Latent Defects in Landlord's Work affecting the Premises of which Tenant notifies Landlord within the Warranty Period for the relevant item of work. Landlord shall commence to perform such work promptly following such notice from Tenant and shall thereafter diligently perform the same. "Warranty Period" means, with respect to any item of work, the period for which such item is covered by any warranty Landlord receives from a contractor or subcontractor. Landlord agrees that each contract with contractor(s) and subcontractor(s) for all items of Landlord's Work shall contain customary warranties with respect to the applicable item of work consistent with good construction practice.

(b) Intentionally omitted.

(c) Tenant's Initial Work. (i) Tenant's Initial Work shall constitute an Alteration and shall be subject to all provisions of this Lease applicable to Alterations, including, without limitation, the provisions of Section 4.02. In addition to such provisions relating to all Alterations, the provisions of this Section 4.01(c) shall apply to Tenant's Initial Work. Notwithstanding anything to the contrary contained herein, all unit sizes, materials, finishes and specifications in respect of Tenant's Initial Work shall be subject to Landlord's approval (such approval not to be unreasonably withheld, conditioned, or delayed so long as such unit sizes, materials, finishes and specifications are consistent with the Building standards).

(ii) Tenant shall cause Tenant's Contractors to perform Tenant's Initial Work in a manner that does not interfere with, impede or adversely affect (including due to the impact of noise, smoke or pollutants) (i) the performance of the Base Building Work, (ii) the performance of construction by or on behalf of other tenants and occupants or (iii) from and after the date the first tenant or occupant of the Building occupies any portion of its premises for the normal conduct of its business, the use and enjoyment of any tenant or occupant of the Building of its premises or access to its premises or any common areas which such tenant or occupant is entitled to use or access. Tenant shall take all reasonable steps requested by Landlord to protect the Base Building Work from and against damage arising out of the performance of Tenant's Initial Work.

(iii) Subject to the terms and conditions of this Section 4.01(c), Tenant acknowledges that Landlord and Landlord's contractors shall have priority (with respect to use of facilities, access to Building areas, use of the hoist(s) and elevators, etc.) at all times over Tenant's Contractors. Notwithstanding the preceding sentence, Landlord shall use reasonable efforts to accommodate Tenant's Contractors so long as the same does not interfere with the performance of the Base Building Work or work performed by or on behalf of any existing or future tenants or occupants of the Building; provided, that Landlord agrees to reasonably cooperate with Tenant in order to provide Tenant with reasonably adequate freight elevator service to the Premises during the performance of Tenant's Initial Work. Landlord and Tenant agree to reasonably cooperate and discuss such elevator services and Landlord and Tenant agree that Tenant shall have the right to a pro rata allocation of usage of the freight elevators during Business Hours on Business Days, subject to Landlord's absolute priority in using the freight elevators for the performance of the Base Building Work during Business Hours on Business Days. Tenant shall also have the right to a pro rata allocation of reserved usage of the freight elevators for such deliveries on a "first to reserve" basis during times other than Business Hours on Business Days. Notwithstanding anything to the contrary contained herein, access to the freight elevators for deliveries of materials and equipment shall be during non-Business Hours and all such usage of the freight elevators shall be subject to Landlord's non-discriminatory procedures for the allocation or reservation of use of the freight elevators. So long as Landlord is operating the freight elevators during Business Hours on Business Days, Tenant's use of such freight elevators during Business Hours on Business Days shall be at no cost to Tenant. If Landlord is no longer operating one or more of the freight elevators, Tenant may use such freight elevator during Business Hours and on Business Days at Tenant's cost (as prorated among the tenants if more than one tenant is using the freight elevators at a particular time), subject to Tenant's right to up to 50 overtime hours in the aggregate of freight elevator and loading dock service at no charge as more particularly described in Section 3.01(b)(ii). Tenant shall pay for the use of the freight elevators at the rates set forth on Exhibit H plus any additional standby time required in connection with such use by Tenant at Landlord's actual cost therefor plus a Landlord fee and overhead charge of 5% of such additional standby costs. Tenant shall pay its proportionate share of the cost (as prorated among the tenants and/or Landlord if more than one tenant and/or Landlord is using the freight elevator at a particular time) of any use of the freight elevators during times other than Business Hours on Business Days.

(iv) In performing Tenant's Initial Work, Tenant shall comply with all reasonable procedures prescribed by Landlord for the coordination of Tenant's Initial Work with the Base Building Work and any other work in the Building; provided that such procedures shall not be applied in a discriminatory manner. Without limiting the generality of the provisions of Section 4.01(c)(i), the provisions of Section 4.02(e) shall apply with respect to the performance of Tenant's Initial Work. Tenant shall ensure that Tenant's Initial Work shall be performed in a manner which shall not create a labor dispute. Tenant shall immediately stop performing Tenant's Initial Work if Landlord notifies Tenant that continuing such work has created, or would create, a labor dispute.

(v) Landlord shall provide, and Tenant shall make arrangements with Landlord for, temporary water, power, heat and air and connections therefor during the period when Tenant's Initial Work is being constructed, and Tenant shall pay any costs actually incurred by Landlord by reason of Tenant's use of any thereof in connection with the performance of Tenant's Initial Work or otherwise until such time as Landlord is to provide such services pursuant to Section 3.01. The foregoing costs actually incurred by Landlord shall either be based on submeters measuring Tenant's use of such services or shall be reasonably determined by Landlord based on Tenant's pro-rata share of the use of such services based on the total square footage of construction being undertaken by Tenant at the Building versus the total square footage of all construction being undertaken at the Building. Tenant shall be responsible, at Tenant's sole cost and expense, for the removal of trash and construction debris resulting from the construction of Tenant's Initial Work. To the extent not otherwise covered herein, Tenant shall pay to Landlord the incremental cost of General Conditions to the extent attributable to the performance of Tenant's Initial Work, including, without limitation, the use of the loading docks and elevators as more particularly described in Section 4.01(c)(iii) above. "General Conditions" means, without limitation, the actual cost of field labor, field supervision, cleanup, removal of waste and debris, protection of work in progress or completed, insurance and security with respect to the Project, maintenance and operation of temporary facilities and services, construction barricades, ventilation, taxes, operation of loading docks, elevator operators, teamsters, master mechanic(s), maintenance mechanic(s), teamster foreman, and other support and security personnel, permit and similar fees and other out-of-pocket expenses incurred in connection therewith and similar costs included in general conditions in accordance with good construction practice in New York City. If more than one tenant of the Building is performing Alterations at the same time then any incremental additional General Conditions incurred by Landlord shall be equitably apportioned among all such Tenants without duplication. Tenant shall pay all reasonable incremental costs incurred by Landlord by reason of Tenant's use of the loading docks and freight elevators as more particularly described in Section 4.01(c)(iii) above. All amounts payable by Tenant under this Section 4.01(c)(v) shall constitute Additional Charges and shall be paid by Tenant to Landlord within 30 days of Tenant's receipt from Landlord of an invoice and reasonable back-up documentation therefor.

(vi) If Landlord incurs any incremental costs due to any delay in the performance or completion of the Base Building Work which delay results from any Tenant Delay, Tenant shall pay such costs to Landlord within 30 days after receipt of an invoice and reasonable supporting documentation therefor. If more than one tenant of the Building is performing Alterations at the same time then any incremental additional General Conditions incurred by Landlord shall be equitably apportioned among all such tenants without duplication.

(d) Violations. (i) From and after the Effective Date, in the event that Tenant is unable to obtain any building permits or other permits, approvals, certificates or sign-offs from any governmental authority required for the performance of Tenant's Initial Work or the legal occupancy by Tenant of the Premises for the purposes expressly permitted under this Lease and to the extent such failure results from the existence of any violations of Law affecting the Building resulting from the performance of any work by Landlord ("Violations"), but specifically excluding any violations caused by or resulting from the action(s) or failure(s) to act of Tenant, Tenant's contractors or any Tenant Indemnified Party or any other tenant, then following written notice thereof from Tenant, Landlord shall proceed reasonably diligently and in good faith to cure and cause each such Violation to be discharged of record. If there is any violation caused by the acts or omissions of other tenants or occupants of the Building, Landlord will use commercially reasonable efforts to cause such tenant or occupant to comply with the provisions of its lease but Landlord shall not be required to institute litigation, arbitration or any other proceeding against such tenant or occupant of the Building, send a default notice, seek to terminate any lease or incur any expenses (other than *de minimis* expenses) in connection therewith.

(ii) Intentionally omitted.

(iii) Subject to the provisions of this Section 4.01(d), if Tenant is unable to perform Tenant's Initial Work or open for the conduct of business solely as a result of any Violation, and (1) Landlord fails to cure such Violation within 10 days (or within 20 days if such Violation is not one which is reasonably susceptible of cure and removal of record within such 10 day period) after notice thereof from Tenant indicating the specific Violation, together with reasonable evidence demonstrating that such Violation is the sole reason Tenant is unable to perform Tenant's Initial Work or open for the conduct of business and (2) Landlord does not dispute, in good faith, such determination by Tenant (or, if Landlord does dispute such determination, and Tenant's position in such dispute ultimately prevails), then the Rent Commencement Date shall be extended 1 day for each day such inability continues until the earlier to occur of (x) such Violation is cured and (y) the date Tenant is able to perform Tenant's Initial Work or open for the conduct of business.

(iv) Intentionally omitted.

(e) Any dispute between Landlord and Tenant arising under this Section 4.01 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

**4.02** Alterations. (a) Except as hereinafter expressly provided, Tenant shall make no improvements, changes or alterations in or to the Premises ("Alterations") without Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Landlord's approval shall not be required for (x) minor Alterations which are purely decorative in nature such as wallpapering, millwork, painting and carpeting (collectively, "Decorative Alterations") and (y) Non-Material Alterations; provided, that (A) with respect to Decorative Alterations and Non-Material Alterations, Tenant shall deliver notice thereof to Landlord at least 10 Business Days prior to the commencement thereof, including detailed plans and specifications for any Non-Material Alteration (except to the extent the relevant Non-Material Alteration is of such a minor nature that it would not be customary industry practice for landlords of First Class Office Buildings to require their tenants to prepare plans and/or specifications for such work) and (B) Tenant shall adhere to the other applicable requirements of this Section 4.02. "Non-Material Alteration" means Alterations that (i) are limited to the interior of the Premises and do not affect the exterior (including the appearance) of the Building or any portion thereof, (ii) are not structural and do not adversely affect the strength of the Building or any portion thereof, (iii) do not affect the usage or the functioning of any of the Building systems, (iv) do not affect other tenants or occupants of the Building, (v) do not require a change to the Building's certificate of occupancy, (vi) do not require a permit from the New York City Department of Buildings and (vii) do not exceed the Non-Material Alterations Cap. The "Non-Material Alterations Cap" means an aggregate of \$100,000 per full floor of the Premises for all Non-Material Alterations performed by Tenant in any rolling 12-month period, Subject to CPI Increases (as hereinafter defined).

(b) Tenant, in connection with any Alteration, shall comply with the Rules and Regulations, the Tenant Design Standards annexed hereto as Exhibit I-1 and the Construction Rules annexed hereto as Exhibit I-2, as such Tenant Design Standards and/or Construction Rules may be amended by Landlord from time to time; provided, that Tenant shall not be bound by any such amendment that (i) imposes, except to a *de minimis* extent, any new or increased costs or financial obligations on Tenant (unless any such cost or financial obligation is the result of compliance with any Laws) or (ii) unreasonably affects the conduct of Tenant's business in the Premises. Tenant shall not proceed with any Alteration (other than Decorative Alterations) unless and until Landlord approves Tenant's plans and specifications therefor. In such instances in which Landlord's approval shall be required with respect to the performance of any Alteration, Landlord shall, within 15 Business Days following receipt of Tenant's plans for the performance of such Alteration (or (i) with respect to Tenant's plans for the performance of Tenant's Initial Work, within 25 Business Days and (ii) in the event of a resubmission of Tenant's Plans not involving material changes, within 10 Business Days with respect to Tenant's plans for the performance of Tenant's Initial Work and within 5 Business Days with respect to Tenant's plans for the performance of any other Alteration), advise Tenant of Landlord's approval or disapproval of such plans or any part thereof. If Landlord shall fail to approve or disapprove Tenant's plans or any part thereof within such 15 Business Day period (or such 25 Business Day period for plans for Tenant's Initial Work or such 10 Business Day or 5 Business Day period, as applicable, for resubmissions not involving material changes), Tenant may give to Landlord a notice of such failure, which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: "**FAILURE TO APPROVE OR DISAPPROVE TENANT'S PLANS WITHIN 5 BUSINESS DAYS SHALL RESULT IN LANDLORD'S DEEMED APPROVAL OF TENANT'S PLANS**", and if Landlord shall fail to approve or disapprove such Tenant's plans within such 5 Business Day period, Landlord shall be deemed to have approved such plans. If Landlord shall disapprove such plans (or any part thereof), Landlord shall set forth its reasons for such disapproval in writing and in reasonable detail and identify those portions of the plans so disapproved. Any review or approval by Landlord of plans and specifications with respect to any Alteration is solely for Landlord's benefit, and without any representation or warranty to Tenant with respect to the adequacy, correctness or efficiency thereof, its compliance with Laws or otherwise.

(c) Tenant shall pay to Landlord within 30 days following demand Landlord's reasonable, actual third-party out-of-pocket costs and expenses (including, without limitation, the reasonable fees of any architect or engineer employed by Landlord for such purpose) for reviewing plans and specifications and inspecting Alterations, in addition to any incremental cost incurred by Landlord as a result of the use of any standby personnel reasonably required as a result of any Alteration. Landlord shall not be entitled to charge (nor shall any Affiliate of Landlord charge) a supervisory or other review fee, except as expressly provided in this Lease.

(d) Before proceeding with any Alteration (other than Tenant's Initial Work) that will cost more than \$500,000.00, Subject to CPI Increases (exclusive of the costs of decorating work and items constituting Tenant's Property), as estimated by a reputable contractor designated by Landlord, Tenant shall furnish to Landlord one of the following (as selected by Tenant): (i) a cash deposit, (ii) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord) or (iii) an irrevocable, unconditional, negotiable letter of credit, issued by a bank and in a form satisfactory to Landlord; each to be equal to 110% of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than 30 days prior to the expiration of the then current letter of credit, failing which Landlord may present the then current letter of credit for payment. Upon (A) the completion of the Alteration in accordance with the terms of this Section 4.02 and (B) the submission to Landlord of (x) proof evidencing the payment in full for said Alteration and (y) written unconditional lien waivers of mechanics' liens and other liens on the Project from all contractors performing said Alteration, the security deposited with Landlord (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure properly to perform, complete and fully pay for any Alteration, as determined by Landlord, Landlord may, upon notice to Tenant, draw on the security deposited under this Section 4.02(d) to the extent Landlord deems necessary in connection with said Alteration, the restoration and/or protection of the Premises or the Project and the payment of any costs, damages or expenses resulting therefrom; provided however that Landlord shall not draw upon such security if Tenant is then contesting in good faith its obligation to make payment and Tenant has so notified Landlord of same unless Landlord determines in its sole discretion that same is necessary for Landlord to pay any costs or expenses so that Landlord will not be subject to criminal penalty or any other fine or charge or so that the Premises or any part thereof or the Project, or any part thereof, shall not be subjected to any lien or encumbrance or otherwise adversely affected, by reason of Tenant's failure to so properly perform, complete and/or fully pay for such Alteration. Notwithstanding the foregoing, the provisions of this Section 4.02(d) shall not apply with respect to any Alteration by Tenant so long as Tenant is (1) the original named Tenant, (2) an entity created by merger, reorganization or recapitalization of or with the original named Tenant, (3) a purchaser of all or substantially all of the original named Tenant's stock or assets or (4) an Affiliate of the original named Tenant (each, an "Intercept Tenant").

(e) Tenant shall obtain (and furnish copies to Landlord of) all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, and in compliance with all Laws (including, without limitation, Section 5 of the New York State Lien Law) and with the plans and specifications approved by Landlord. At Tenant's request, Landlord shall execute all required permit forms prior to the submission of plans by Tenant and/or Landlord's review of such plans, but the execution of such forms by Landlord shall not constitute approval of the Alterations in question. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the then standards for the Building established by Landlord. Alterations shall be performed by architects, engineers and contractors first approved by Landlord (which approval shall not be unreasonably withheld or delayed); provided, that any Alterations which involve a connection(s) or a tie-in to the systems of the Building shall be performed only by the contractor(s) designated by Landlord (provided, further, that the charges of such contractor(s) shall be reasonably competitive with the charges of contractor(s) providing similar services to other First Class Office Buildings). Landlord hereby agrees that the contractors, subcontractors, architects, engineers and/or expeditors listed on Exhibit K attached hereto are hereby approved by Landlord on the date hereof; provided, that Landlord may, from time to time, reasonably remove or add one or more contractors, subcontractors, architects, engineers and/or expeditors from or to Exhibit K in Landlord's reasonable discretion. The performance of any Alteration or any other work in the Building shall not be carried out in a manner which would violate the construction rules and regulations set forth in Exhibit I-2. Tenant shall immediately stop the performance of any work or service by any party if Landlord notifies Tenant that continuing such performance would violate the construction rules and regulations set forth in Exhibit I-2, and Tenant shall not resume the performance of such work or service until such time as the same may be performed in a manner which shall not violate the construction rules and regulations set forth in Exhibit I-2.

(f) Throughout the performance of Alterations, Tenant and Tenant's Contractors (as defined in Exhibit J) shall carry insurance meeting the requirements set forth in Sections (B) and (C) of Exhibit J attached hereto and Section 7.02 of this Lease. Tenant shall furnish Landlord with evidence that such insurance is in effect no less than 10 days prior to the commencement of any Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations. Tenant shall require that all insurance policies carried by any Tenant's Contractors include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against Landlord, The Related Companies, L.P., Oxford Hudson Yards LLC and any of such entities' officers, agents, or employees. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged. In the event that Tenant or any of Tenant's Contractors fails to maintain the coverages or limits as required herein, Landlord may obtain such insurance as an agent of such party without prior notice. Any premiums paid by Landlord to effect such coverages together with interest thereon at the Interest Rate from the date paid by Landlord until the date reimbursed by Tenant shall be payable by Tenant to Landlord; provided however that to the extent such insurance shall be cancelable, then such premiums shall be pro-rated and reimbursed to the extent funds are returned to Landlord by the insurance company as soon as Tenant or any of Tenant's Contractors places the appropriate insurance coverage.

(g) Should any mechanics' or other liens be filed against any portion of the Project by reason of the acts or omissions of, or because of a claim against, Tenant or anyone claiming under or through Tenant, Tenant shall cause the same to be canceled or discharged of record by bond or otherwise within 30 days after notice from Landlord. If Tenant shall fail to cancel or discharge said lien or liens within said 30 day period, or if Landlord is required to discharge any of said liens prior to the end of said 30 day period pursuant to any Superior Mortgage or Superior Lease, Landlord may cancel or discharge the same and, upon Landlord's demand, Tenant shall reimburse Landlord for all actual out-of-pocket costs incurred in canceling or discharging such liens, together with interest thereon at the Interest Rate from the date incurred by Landlord to the date of payment by Tenant, such reimbursement to be made within 30 days after receipt by Tenant of a written statement from Landlord as to the amount of such costs. Tenant shall indemnify and hold Landlord harmless from and against all actual out-of-pocket costs (including, without limitation, reasonable attorneys' fees and disbursements and costs of suit), losses, liabilities or causes of action arising out of or relating to any Alteration, including, without limitation, any mechanics' or other liens asserted in connection with such Alteration.

(h) Tenant shall deliver to Landlord, within 30 days after the completion of an Alteration, “as-built” drawings thereof using the AutoCAD Computer Assisted Drafting and Design System, Version 12 or later or such other system or medium as Landlord may accept. During the Term, Tenant shall keep records of Alterations costing in excess of \$50,000 including plans and specifications, copies of contracts, invoices, evidence of payment and all other records customarily maintained in the real estate business relating to Alterations and the cost thereof and shall, within 30 days after demand by Landlord, furnish to Landlord copies of such records.

(i) All Alterations to and Fixtures installed by Tenant in the Premises shall be fully paid for by Tenant in cash and shall not be subject to conditional bills of sale, chattel mortgages, or other title retention agreements.

(j) Landlord designed the Building with the intent of achieving a “Platinum” level LEED certification with respect thereto. All Alterations shall be designed and performed by Tenant in compliance with the requirements set forth on Exhibit P attached hereto. Landlord shall cooperate with Tenant, at no cost to Landlord, by providing to Tenant and Tenant’s consultants any necessary and pertinent documentation reasonably requested by Tenant which relates to Building systems, materials, and site characteristics required for Tenant to apply for LEED certification for the Premises.

(k) Any dispute between Landlord and Tenant arising under this Section 4.02 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

**4.03 Landlord’s and Tenant’s Property.** (a) Subject to Section 4.03(d), all fixtures (other than movable trade fixtures constituting Tenant’s Property), equipment (other than movable equipment constituting Tenant’s Property), improvements and appurtenances attached to or built into the Premises, whether or not at the expense of Tenant, and all fixtures, equipment, improvements and appurtenances attached to or built into any other area of the Building by or on behalf of Tenant (collectively, “Fixtures”), shall be and remain a part of the Building and shall not be removed by Tenant except as expressly provided to the contrary in this Lease. All Fixtures shall be the property of Tenant during the Term and, upon expiration or earlier termination of this Lease, unless expressly provided otherwise in this Lease, shall become the property of Landlord.

(b) All movable partitions, business and trade fixtures, machinery and equipment, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises or elsewhere in the Building (collectively, “Tenant’s Property”) shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided, that if any Tenant’s Property is removed, Tenant shall repair any damage to the Premises or to the Building resulting from the installation and/or removal thereof. Notwithstanding the foregoing, subject to Section 4.03(d), any equipment or other property paid for with any allowance or credit granted by Landlord to Tenant shall not be considered Tenant’s Property and shall be and remain a part of the Premises or such other location in the Building in which such equipment or other property is located, shall, upon the expiration or earlier termination of this Lease, be the property of Landlord and shall not be removed by Tenant.

(c) (i) On the 40th Floor Expiration Date, (A) the Lease and the term thereof shall terminate and expire solely with respect to the 40<sup>th</sup> Floor Premises and (B) Tenant shall surrender vacant possession of the 40<sup>th</sup> Floor Premises to Landlord, free and clear of all tenancies, broom clean and otherwise in the condition required under this Lease. At or before the 40th Floor Expiration Date, or within 30 days after any earlier termination of this Lease, Tenant, at Tenant's expense, shall remove Tenant's Property from the 40th Floor Premises (except such items thereof as Landlord shall have expressly permitted in writing to remain, which shall become the property of Landlord), and Tenant shall repair any damage to the 40th Floor Premises resulting from any installation and/or removal of Tenant's Property. Any items of Tenant's Property which remain in the 40th Floor Premises after the 40th Floor Expiration Date, or more than 30 days after an earlier termination of this Lease, may, at the option of Landlord, be deemed to have been abandoned, and may be retained by Landlord as Landlord's property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

(ii) At or before the 37th Floor Expiration Date, or within 30 days after any earlier termination of this Lease, Tenant, at Tenant's expense, shall remove Tenant's Property from the Building (except such items thereof as Landlord shall have expressly permitted in writing to remain, which shall become the property of Landlord), and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property. Any items of Tenant's Property which remain in the Building after the 37th Floor Expiration Date, or more than 30 days after an earlier termination of this Lease, may, at the option of Landlord, be deemed to have been abandoned, and may be retained by Landlord as Landlord's property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

(d) Landlord, by notice given to Tenant at any time prior to or within 60 days after each applicable Expiration Date or any earlier termination of this Lease, may require Tenant, notwithstanding Section 4.03(a), to remove all or any Specialty Installations. If Landlord shall give such notice, then Tenant, at Tenant's expense, on or prior to the later of (x) the applicable Expiration Date and (y) the date that is 30 days after the giving of such notice by Landlord, shall either (i) remove the Specialty Installations from the applicable Premises and the Building, repair and restore the applicable Premises and the Building to the condition existing prior to installation thereof and repair any damage to the applicable Premises or to the Building due to such removal (such removal and repair work is collectively hereinafter referred to as the "Restoration Work") or (ii) elect by written notice to Landlord for Landlord to perform the Restoration Work, in which event Tenant shall pay or reimburse Landlord for the costs thereof within 30 days after demand therefor. Notwithstanding the foregoing, Tenant, at the time Tenant submits to Landlord Tenant's plans and specifications for any Alterations, may request in writing that Landlord specifically identify any Specialty Installations shown on Tenant's plans and specifications which Tenant must remove at the end of the applicable Term (and restore the applicable Premises and the Building to its condition existing prior to the installation of such Specialty Installations). The term "Specialty Installations" shall mean installations consisting of vaults, safes, poured concrete or similar raised flooring, internal staircases, vertical and horizontal risers, dumbwaiters, vertical transportation systems, roof equipment, supplemental HVAC equipment, kitchen facilities (but not pantry facilities), private bathrooms, other installations which penetrate the slabs of the Premises, Alterations which affect the Building's curtain wall (provided that Restoration Work in connection with any such Alterations affecting the Building's curtain wall shall be performed by Landlord at Tenant's expense), installations in areas of the Building other than the Premises and any other installations which are not customary installations for tenants occupying premises comparable to the Premises for general, administrative and executive office use as permitted under this Lease. The provisions of this Section 4.03(d) shall survive the expiration or other termination of this Lease.

**4.04 Access and Changes to Building.** (a) Landlord reserves the right, at any time, to make changes in or to the Project as Landlord may deem necessary or desirable, and Landlord shall have no liability to Tenant therefor, provided any such change does not deprive Tenant of access to the Premises through a Building lobby and the Elevators and does not affect the first-class nature of the Project. Landlord may install and maintain pipes, fans, ducts, wires and conduits within or through the walls, floors or ceilings of the Premises; provided, that the same (i) are installed within the interior of the walls of the Premises or the floors or ceilings thereof, at Landlord's sole cost and expense or, if installed adjacent to the interior walls of the Premises or the floors or ceilings of the Premises, if appropriate, shall be located in boxed enclosures and adequately furred and (ii) shall not, except to a *de minimis* extent, reduce the rentable square footage of the Premises or the finished ceiling height, provided, however, that to the extent there are alternative locations for the pipes and conduits outside of the Premises that provide the same service, do not cost more (by more than a *de minimis* amount, unless Tenant, after being advised of the incremental cost, agrees to pay such cost to Landlord) and do not inconvenience or otherwise adversely affect Landlord or other existing or future tenants of the Building, Tenant shall have the right to require Landlord to use such alternative locations. Landlord shall restore, at Landlord's cost, to substantially the same condition existing prior to such work by Landlord, any damage to any Fixtures or Tenant's Property caused by the performance of any such installation or maintenance work by Landlord. In exercising its rights under this Section 4.04, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Premises for the ordinary conduct of Tenant's business (but without any obligation to utilize overtime or premium pay labor except as otherwise provided under Section 3.02(e), applied *mutatis mutandis* ). Tenant shall not have any easement or other right in or to the use of any door or any passage or any concourse or any plaza connecting the Building with any other building or to any public conveniences, and the use of such doors, passages, concourses, plazas and conveniences may, without notice to Tenant, be regulated or discontinued at any time by Landlord; provided, that Tenant shall at all times have reasonable access to the Premises through the Elevators and the applicable Building lobby.

(b) Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Building, including, without limitation, exterior Building walls, core corridor walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, base building telecommunications or technical rooms, electrical closets, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises, are reserved to Landlord and are not part of the Premises. Landlord reserves the right to change the name or address of the Project or any portion thereof at any time and from time to time. Upon reasonable prior notice to Landlord, Landlord will reasonably cooperate with Tenant (at no cost or liability to Landlord) to coordinate access to floors immediately above and below the Premises during Tenant's Initial Work and during the performance of any subsequent Alteration so that Tenant may perform certain aspects of Tenant's Initial Work (e.g., installing certain plumbing, duct or cabling work) or such subsequent Alteration, as applicable. Any such access shall be subject to the express terms and conditions of each tenant's lease relating to such space immediately above and/or below the Premises and any requirements imposed by any such tenant pursuant to such tenant's lease in connection with such access and the indemnity provisions set forth in Section 6.12(b) shall apply in connection therewith.

(c) Landlord shall have no liability to Tenant if at any time any windows of the Premises are either temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building (or permanently darkened or obstructed if required by Law) or covered by any translucent material for the purpose of energy conservation, or if any part of the Project, other than the Premises, is temporarily or permanently closed or inoperable; provided that the same does not deprive Tenant of access to the Premises through a Building lobby and the Elevators. If at any time the windows of the Premises are temporarily darkened or obstructed as permitted in the immediately preceding sentence, Landlord shall, to the extent permitted by Law or applicable governmental authority, perform such repairs, maintenance, alterations or improvements as reasonably promptly as practicable and as reasonably necessary to re-open the same, and, Landlord shall use commercially reasonable efforts to minimize the period of time during which such windows are temporarily darkened or obstructed.

(d) Landlord and persons authorized by Landlord shall have the right, upon reasonable prior notice to Tenant (except in an emergency and which, in the case of non-emergency inspections or work to be performed by Landlord within the Premises, shall be at least 24 hours in advance), to enter the Premises (together with any necessary materials and/or equipment), to inspect or perform such work as Landlord may reasonably deem necessary or to exhibit the Premises to prospective purchasers or, during the last 18 months of the Term, to prospective tenants, or for any other purpose as Landlord may reasonably deem necessary or desirable. Notwithstanding the foregoing, Landlord shall not bring and/or store more materials and equipment in the Premises to perform such work than are reasonably necessary at any time. Tenant shall have the right to have a representative of Tenant accompany Landlord on any entry into the Premises, but Landlord's rights to conduct any such entry, and the timing of such entry, shall not be affected if Tenant shall fail to make such representative available. Landlord shall have no liability to Tenant by reason of any such entry. Landlord shall not be required to make any improvements or repairs of any kind or character to the Premises during the Term. In connection with any access to the Premises by Landlord and persons authorized by Landlord, Landlord and such persons shall exercise commercially reasonable efforts to minimize interference with Tenant's access to, and use of, the Premises for the normal conduct of Tenant's business therein.

(e) Tenant shall have the right to reasonably designate, by written notice to Landlord, certain areas of the Premises, not to exceed 3,000 rentable square feet, in the aggregate, as secure areas (each, a “Secure Area”) to which Landlord shall not have access without being accompanied by a representative of Tenant (except in the case of an emergency or when Tenant does not make a representative available upon 2 Business Days’ prior written notice); provided, that the Secured Area does not block access to base building systems or other areas of the Building to which Landlord requires regular access. Landlord shall not be required to provide cleaning services or other services which require entry to such Secure Area. Landlord shall not have liability to Tenant for any failure of Landlord to perform any of its obligations hereunder by reason of Landlord’s inability to enter any Secure Area. Notwithstanding anything in this Lease to the contrary, in no event shall the obligations of Landlord under this Section 4.04(e) in any way be construed to obligate Landlord to pay overtime or premium rates for work, materials or access to the Secured Area or any other area of the Premises, and in no event shall Landlord be deemed to be obligated to spend any greater sums of money to perform any work than it would have had to pay if Landlord, and its agents, employees and contractors had obtained access to the Secured Area.

**4.05 Repairs.** (a) Tenant shall keep the Premises (including, without limitation, all Fixtures) in good condition and, upon expiration or earlier termination of each applicable Term, shall surrender the applicable Premises to Landlord in the same condition as when first occupied, reasonable wear and tear excepted and otherwise in the condition required under Section 4.03(c). Tenant’s obligation shall include, without limitation (and notwithstanding the provisions of Section 4.05(b) below), the obligation to repair all damage caused by Tenant, its agents, employees, invitees and licensees to the equipment and other installations in the Premises or anywhere in the Building. Any maintenance, repair or replacement to the windows, the Building systems, the Building’s structural components or any areas outside the Premises and which is Tenant’s obligation to perform shall be performed by Landlord at Tenant’s reasonable expense. Tenant shall not commit or allow to be committed any waste or damage to any portion of the Premises or the Project.

(b) Subject to the second sentence of Section 4.05(a), Landlord, at Landlord’s expense (but subject to reimbursement by way of Operating Expenses to the extent includable therein), shall operate, maintain, repair and replace, if necessary, (i) all structural portions of the Building, such as, by way of example only, the roof, foundation, footings, exterior walls, load-bearing columns, ceiling and floor slabs, windows, window sills and sashes, (ii) all common and public service areas of the Building, including, without limitation, all common elevators, (iii) all Building systems serving the common and public service areas and the Premises and (iv) all fixtures located in the core restrooms in the Premises, throughout the Term, and in such a manner as is consistent with the maintenance, operation and repair standards of First Class Office Buildings; provided, that Landlord’s obligations under this Section 4.05(b) shall be limited to areas of, and installations within, the Building which Tenant is entitled to use or which otherwise serve the Premises and Landlord shall have no liability to Tenant for any failure to maintain such standards except to the extent such failure materially and adversely affects Tenant’s use and enjoyment of the Premises. Notwithstanding the foregoing, if any damage repaired by Landlord under this Section 4.05(b) is caused by Tenant or any of Tenant’s agents, employees, invitees and licensees, such repair shall be performed by Landlord at Tenant’s reasonable expense.

**4.06 Compliance with Laws; Hazardous Materials.** (a) Tenant shall comply with all laws, ordinances, rules, orders and regulations (present, future, ordinary, extraordinary, foreseen or unforeseen) of any governmental, public or quasi-public authority and of the New York Board of Fire Underwriters and any other entity performing similar functions, at any time duly in force (collectively “Laws”), the application of which is attributable to, any work, installation, occupancy, use or manner of use by Tenant of the Premises or any part thereof, except as expressly set forth in the next sentence. Nothing contained in this Section 4.06 shall require Tenant to make any (i) structural changes or changes to the base building systems or (ii) changes to the core bathrooms (but not any private, executive or other bathrooms installed by Tenant, with respect to which Tenant shall be responsible for compliance with Laws as set forth in the first sentence of this paragraph) in the Premises, unless, in the case of either of clauses (i) or (ii), the same are necessitated by reason of Tenant’s performance of any Alterations, Tenant’s manner of use of the Premises or the use by Tenant of the Premises for purposes other than normal and customary ordinary office purposes. Tenant shall procure and maintain all licenses and permits required for its business. Notwithstanding the provisions of Section 4.06(a), Tenant, at its own cost and expense, may contest, in any manner permitted by Law, the validity or the enforcement of any Laws with which Tenant is required to comply pursuant to this Lease; provided that (A) any such contest and/or Tenant’s non-compliance with any such Laws shall not (I) subject any Landlord Indemnified Party to (x) criminal prosecution, (y) material fine or (z) any other civil liability that would adversely affect the operation of the Building or the rights of other tenants or occupants of the Building, (II) subject the Building (or any portion thereof) to lien or sale or cause, or be reasonably likely to cause, the same to be condemned or vacated or (III) be in violation of any Superior Mortgage or Superior Lease; (B) Tenant shall first deliver to Landlord a surety bond issued by a surety company of recognized responsibility, or other security reasonably satisfactory to Landlord, indemnifying and protecting Landlord and any Superior Mortgagee or Superior Lessor against any loss, cost, liability, damage or expenses (including, without limitation, interest and penalties and reasonable attorneys’ fees and disbursements) which could arise by reason of such non-compliance, which bond or other security (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be released by Landlord promptly upon resolution of such contest; and (C) Tenant shall promptly, diligently and continuously prosecute such contest and shall keep Landlord informed, on a regular basis, of the status of such contest.

(b) Landlord, at Landlord’s expense (but subject to reimbursement by way of Operating Expenses to the extent includable therein), shall comply or cause compliance with all Laws affecting the public and common areas of the Building, the Building systems or the Premises or the use and occupancy thereof (except (x) as expressly set forth in Section 4.06(a) above and (y) that Landlord shall have no liability to Tenant for any failure to so comply or cause compliance except to the extent such failure materially and adversely affects Tenant’s use and enjoyment of the Premises) subject to Landlord’s right to contest and defer compliance with such Laws pursuant to appropriate proceedings, provided that Landlord shall not have the right to defer such compliance if (i) such non-compliance or contest shall prevent Tenant from lawfully occupying the Premises for the use permitted hereunder or (ii) noncompliance threatens the safety of persons or property. On the Effective Date, Landlord shall deliver the Premises to Tenant in substantial compliance with all applicable Laws (including Laws with respect to Hazardous Materials) and free of Hazardous Materials (as hereinafter defined). If, during the Term, Landlord or its employees, contractors or agents install, use, release, store or place any Hazardous Materials in or about (1) the Premises or (2) to the extent same materially and adversely affects Tenant’s use and enjoyment of the Premises, the Building or the Project, in any case in violation of applicable Laws, then Landlord shall be obligated to remove and dispose of such Hazardous Materials in compliance with all Laws (including, without limitation, any Laws with respect to Hazardous Materials).

(c) (i) Tenant shall not cause or permit Hazardous Materials to be used, transported, stored, released, handled, produced or installed in, on or from the Premises or the Building other than customary office, cleaning and/or maintenance and/or construction supplies brought into, used in and/or kept upon the Premises or the Building if and to the extent permitted pursuant to Laws and in addition, with respect to construction supplies, if and to the extent used in accordance with good construction practices. The term “Hazardous Materials” means any substance or material defined by any Law that is now or may hereafter be applicable, as “hazardous,” “toxic” or words of similar import.

(ii) In the event of a breach of the provisions of this Section 4.06(c), Landlord shall, in addition to all of its rights and remedies under this Lease and pursuant to Laws, require Tenant to remove any such Hazardous Materials from the Premises or the Building in the manner prescribed for such removal by applicable Laws, and the indemnity provisions set forth in Section 6.12(b) shall apply in connection therewith.

**4.07 Tenant Advertising**. Tenant shall not use, and shall cause each of its affiliates not to use, the name or likeness of the Building or the Project in any advertising (by whatever medium) without Landlord’s consent (not to be unreasonably withheld or delayed), provided, however, that Tenant may use the name and address of the Building on its stationary and in advertisements for identification purposes only.

**4.08 Right to Perform Tenant Covenants**. If Tenant fails to perform any of its obligations under this Lease, Landlord, any Superior Lessor or any Superior Mortgagee (each, a “Curing Party”) may perform the same at the expense of Tenant (a) immediately and without notice in the case of emergency or in case such failure may result in a violation of any Law or in a cancellation of any insurance policy maintained by Landlord; provided, that Landlord agrees to provide such notice as is reasonably practicable under the circumstances (which the parties agree may be no notice) in the event of the circumstances described in this clause (a) and (b) in any other case if such failure continues beyond any applicable notice and grace period. If a Curing Party performs any of Tenant’s obligations under this Lease, Tenant shall pay to Landlord (as Additional Charges) the costs thereof (including all reasonable fees and costs, including reasonable legal fees and disbursements, incurred by such Curing Party in connection therewith), together with interest at the Interest Rate from the date incurred by the Curing Party until paid by Tenant, within 30 days after receipt by Tenant of a statement as to the amounts of such costs, accompanied by invoices or other reasonable supporting documentation. If the Curing Party effects such cure by bonding any lien which Tenant is required to bond or otherwise discharge (after the giving of any required notice and the expiration of any applicable grace periods), Tenant shall obtain and substitute a bond for the Curing Party’s bond and shall reimburse the Curing Party for the cost of the Curing Party’s bond. “Interest Rate” means the lesser of (i) the base rate from time to time announced by Citibank, N.A. (or, if Citibank, N.A. shall not exist or shall cease to announce such rate, such other bank in New York, New York, as shall be designated by Landlord in a notice to Tenant) to be in effect at its principal office in New York, New York plus 3% and (ii) the maximum rate permitted by law.

**4.09 Telecommunications; Shaft Space.** (a) Tenant shall be responsible, at its sole cost and expense, for bringing telecommunication service, data wiring service and cable television service to the Premises. Landlord shall provide two separate points of entry for Tenant's telecommunications requirements from such point of entry to the Premises and from the Premises to the roof of the Building. Each separate sleeve within the Building core shall accommodate two (2) 1.5" conduits for Tenant's telecommunications requirements. At Tenant's request, Landlord shall install two (2) 1.5" conduits in each sleeve and Tenant shall reimburse Landlord for the out-of-pocket costs actually incurred by Landlord in connection with such installation within 30 days after rendition of a bill therefor. Any installation made by Tenant in such shaft space, including core drilling and the installation of any conduit or wiring, shall be performed at Tenant's sole cost and expense, in accordance with all Laws and the Rules and Regulations, and shall constitute an Alteration under this Lease. Tenant shall indemnify and save harmless Landlord from and against all loss, damage, liability, cost and expense of any nature (including, without limitation, reasonable attorneys' fees and expenses) by reason of accidents, damage, injury or loss to any and all persons and property, or either, whosoever or whatsoever to the extent resulting from or arising in connection with Tenant's installation, use, maintenance and removal of the equipment that Tenant installs in the shaft space and Tenant's insurance in respect of the Premises shall include coverage for any losses incurred in connection with such installation, use, operation, maintenance and removal. Upon the expiration of the Term, all of such fixtures and equipment installed in the shaft space by Tenant shall be removed by Tenant at its sole cost and expense.

(b) Tenant shall have the right, at Tenant's sole cost and expense, to contract for telecommunications service from any reputable carrier which serves the area, subject to Landlord's reasonable consent (which consent may include, without limitation, the condition that such service provider enter into a license agreement with Landlord which is reasonably satisfactory to Landlord), and Landlord shall reasonably cooperate with Tenant in connection therewith, without out-of-pocket cost, expense or liability to Landlord. As of the date of this Lease, the following telecommunication service providers service the Building: Verizon, Time Warner Cable, AT&T, Sidera, Lightpath, Level 3 and Zayo. If Tenant desires to subscribe to a telecommunications company not listed in this clause (b), at Tenant's written request, Landlord shall reasonably cooperate with Tenant to allow any such service provider to provide service to the Building for Tenant's operations, but only to the extent without liability or out-of-pocket cost or expense to Landlord.

(c) Landlord shall not be responsible for any delays occasioned by failure of a telecommunications company to furnish any such services.

## ARTICLE 5

### Assignment and Subletting

**5.01**     **Assignment; Etc.** (a) Subject to the further provisions of this Article 5, neither this Lease nor the term and estate hereby granted, nor any part hereof or thereof, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise, and neither the Premises, nor any part thereof, shall be subleased, be licensed, be used or occupied by any person or entity other than Tenant or be encumbered in any manner by reason of any act or omission on the part of Tenant, and no rents or other sums receivable by Tenant under any sublease of all or any part of the Premises shall be assigned or otherwise encumbered, without the prior consent of Landlord. Except as hereinafter expressly provided, the dissolution or direct or indirect transfer of control of Tenant (however accomplished including, by way of example, the addition of new partners or members or withdrawal of existing partners or members, or transfers of interests in distributions of profits or losses of Tenant, issuance of additional stock, redemption of stock, stock voting agreement, or change in classes of stock) shall be deemed an assignment of this Lease regardless of whether the transfer is made by one or more transactions, or whether one or more persons or entities hold the controlling interest prior to the transfer or afterwards. An agreement under which another person or entity becomes responsible for all or a portion of Tenant's obligations under this Lease shall be deemed an assignment of this Lease. No assignment or other transfer of this Lease and the term and estate hereby granted, and no subletting of all or any portion of the Premises shall relieve Tenant of its liability under this Lease or of the obligation to obtain Landlord's prior consent to any further assignment, other transfer or subletting. Any attempt to assign this Lease or sublet all or any portion of the Premises in violation of this Article 5 shall be null and void. Notwithstanding anything to the contrary contained in this Section 5.01(a), the direct or indirect transfer of shares or other equity interests in Tenant shall not constitute an assignment of this Lease and shall not require Landlord's consent if accomplished through a recognized stock exchange or through the public "over-the-counter" securities market.

(b)       Notwithstanding Section 5.01(a), without the consent of Landlord or application of Section 5.05, this Lease may be assigned to (i) an entity created by merger, reorganization or recapitalization of or with Tenant or (ii) a purchaser of all or substantially all of Tenant's membership interests, stock or assets; provided, in the case of both clause (i) and clause (ii), that (A) Landlord shall have received a notice of such assignment from Tenant, (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease, (C) such assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (D) the assignee is a reputable entity of good character and, immediately after giving effect to such assignment, shall have an aggregate net worth (computed in accordance with GAAP) at least equal to \$300,000,000.00.

(c)       Notwithstanding Section 5.01(a), without the consent of Landlord or application of Section 5.05, Tenant may assign this Lease or sublet all or any part of the Premises to an Affiliate of Tenant; provided, that (i) Landlord shall have received a notice of such assignment or sublease from Tenant; and (ii) in the case of any such assignment, (A) the assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease. "Affiliate" means, as to any designated person or entity, any other person or entity which controls, is controlled by, or is under common control with, such designated person or entity. "Control" (and with correlative meaning, "controlled by" and "under common control with") means ownership or voting control, directly or indirectly, of 35% or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question.

(d) Tenant may from time to time, subject to all of the provisions of this Lease but without the consent of Landlord, permit portions of the Premises to be used or occupied under so-called “desk sharing” arrangements by a Desk Space User; provided, that (i) any such use or occupancy of desk or office space shall be without the installation of demising walls separating such desk or office space, any separate entrance or any signage identifying such Desk Space User, (ii) at any time during the Term, the aggregate of the rentable square footage then used by Desk Space Users pursuant to this Section 5.01(d) shall not exceed 10% of the rentable square feet of the Premises, (iii) each Desk Space User shall use the Premises in accordance with all of the provisions of this Lease, and only for the use expressly permitted pursuant to this Lease, (iv) in no event shall the use of any portion of the Premises by a Desk Space User create or be deemed to create any right, title or interest of such Desk Space User in any portion of the Premises or this Lease, (v) any such “desk sharing” arrangement shall terminate automatically upon the termination of this Lease, (vi) Tenant shall receive no rent or other payment or consideration for the use or occupancy of any space in the Premises by any Desk Space User in excess of an allocable share of the Rent reserved hereunder, (vii) each Desk Space User shall be engaged in a business or activity which is in keeping with standards of the Building and (viii) any such desk sharing arrangement is for a valid business purpose and not to circumvent the provisions of this Article 5. Upon request of Landlord, Tenant shall advise Landlord of any Desk Space Users in the Premises, and shall provide (A) a description of the nature and character of the business being conducted in the Premises by such Desk Space User and (B) the rentable square feet of the Premises occupied by such Desk Space User, together with a copy of the agreement, if any, relating to the use or occupancy of such portion of the Premises by such Desk Space User. “Desk Space User” means a bona fide client, service provider, or other person or entity with which Tenant has a significant, ongoing business relationship.

**5.02 Landlord’s Right of First Offer**. (a) If Tenant desires to assign this Lease or sublet all or part of the Premises for all or substantially all of the then-remaining Term (other than in accordance with Sections 5.01(b) or (c)), Tenant shall give to Landlord notice (“Tenant’s Offer Notice”) thereof, specifying (i) in the case of a proposed subletting, the location of the space to be sublet (including the specific area to be demised for sublet on any floor of the Premises) and the term of the subletting of such space, (ii) (A) in the case of a proposed assignment, Tenant’s good faith offer of the consideration Tenant desires to receive or pay for such assignment (including any concessions Tenant desires to offer to the proposed assignee) or (B) in the case of a proposed subletting for all or substantially all of the then-remaining Term, Tenant’s good faith offer of the rent which Tenant desires to receive for such proposed subletting (including fixed rent, additional rent including proportionate shares, base years and/or base amounts for any escalation rent to be paid on account of PILOT, Impositions, taxes and operating expenses, electricity charges and other pass-through expenses and the amount of any work allowance, rent abatement or other tenant inducement, and any other proposed terms required by Landlord to calculate the Net Effective Rental Tenant desires to receive for such proposed subletting) and (iii) the proposed assignment or sublease commencement date.

(b) Tenant's Offer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at Landlord's option, (i) sublease such space from Tenant (if the proposed transaction is a sublease of all or part of the Premises for all or substantially all of the then-remaining Term), (ii) terminate this Lease (if the proposed transaction is an assignment or a sublease of all or substantially all of the Premises or a sublease of a portion of the Premises which, when aggregated with other subleases then in effect, covers all or substantially all of the Premises, in either case, for substantially all of the then-remaining Term), or (iii) terminate this Lease with respect to the space covered by the proposed sublease (if the proposed transaction is a sublease of part of the Premises for all or substantially all of the then-remaining Term). Said option may be exercised by Landlord by notice to Tenant within 30 days after a Tenant's Offer Notice, together with all information required pursuant to Section 5.02(a), has been given by Tenant to Landlord. For the purposes of this Section 5.02 "substantially all of the then-remaining Term" shall mean that the term of the proposed subletting shall expire within the last twelve (12) months of the then Term.

(c) If Landlord exercises its option under Section 5.02(b)(ii) to terminate this Lease, then this Lease shall terminate on the later of (i) the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice and (ii) the proposed assignment or sublease commencement date specified in the applicable Tenant's Offer Notice, and all Rent shall be paid and apportioned to such termination date.

(d) If Landlord exercises its option under Section 5.02(b)(iii) to terminate this Lease with respect to the space covered by a proposed sublease for all or substantially all of the then-remaining Term, then (i) this Lease shall terminate with respect to such part of the Premises on the later of (x) the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice and (y) the proposed sublease commencement date specified in the applicable Tenant's Offer Notice; (ii) from and after such termination date the Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises prior to such termination and (iii) Tenant shall pay to Landlord, within 30 days after demand and completion, the reasonable costs incurred by Landlord in demising separately such part of the Premises and in complying with any Laws relating to such demise.

(e) If Landlord exercises its option under Section 5.02(b)(i) to sublet the space Tenant desires to sublet, such sublease to Landlord or its designee (as sublessee) shall be in form and substance reasonably satisfactory to Landlord at the lower of (i) the rental rate per rentable square foot of Fixed Rent and Additional Charges then payable pursuant to this Lease or (ii) the rental rate per rentable square foot set forth in the applicable Tenant's Offer Notice with respect to such sublet space, and shall be for the term set forth in the applicable Tenant's Offer Notice (except that such term shall commence on the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice if such date is later than the proposed commencement date set forth in such Tenant's Offer Notice), and:

(A) shall be subject to all of the terms and conditions of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section 5.02(e);

(B) shall be upon the same terms and conditions as those contained in the applicable Tenant's Offer Notice (including all rent abatements and other tenant inducements set forth therein) and otherwise on the terms and conditions of this Lease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section 5.02(e);

(C) shall permit the sublessee, without Tenant's consent, freely to assign such sublease or any interest therein or to sublet all or any part of the space covered by such sublease and to make any and all alterations and improvements in the space covered by such sublease; provided, that (1) Tenant shall have no removal, restoration or repair obligations under Section 4.03 hereof with respect to such alterations and improvements in such space made by such sublessee and (2) the sublessee shall be subject to such restoration obligations as are set forth in the applicable Tenant's Offer Notice;

(D) shall provide that any assignee or further sublessee of Landlord or its designee may, at the election of Landlord, make alterations, decorations and installations in such space or any part thereof, any or all of which may be removed, in whole or in part, by such assignee or sublessee, at its option, prior to or upon the expiration or other termination of such sublease, provided that (1) such assignee or sublessee, at its expense, shall repair any damage caused by such removal, (2) Tenant shall have no removal, restoration or repair obligations under Section 4.03 hereof with respect to such alterations, decorations and installations in such space made by such assignee or sublessee and (3) Landlord or its designee shall remain subject to such restoration obligations as are set forth in the applicable Tenant's Offer Notice; and

(E) shall provide that (1) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (2) any assignment or subletting by Landlord or its designee (as the sublessee) may be for any purpose or purposes that Landlord shall deem appropriate, (3) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to demise separately the subleased space and to comply with any Laws relating to such demise, and (4) at the expiration of the term of such sublease, Tenant shall accept the space covered by such sublease in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve such space in good order and condition and to such restoration obligations as are set forth to be imposed on such sublessee in the applicable Tenant's Offer Notice. If Landlord is unable to give Tenant possession of the space covered by such sublease at the expiration of the term of the sublease by reason of the holding over or retention of possession of any tenant or other occupant through Landlord, then, provided Tenant otherwise has surrendered the balance of the Premises to Landlord as required under this Lease, Tenant shall be deemed to have delivered possession of the Premises to Landlord upon the Expiration Date and shall not be deemed a holdover under this Lease.

If Landlord shall enter into a sublease pursuant to its option under Section 5.02(b)(i), Tenant shall be released from all obligations and liabilities under this Lease to the extent pertaining to the space subleased by Landlord that accrue from and after the commencement date of such sublease through the expiration date or earlier termination date of such sublease to the extent, and only to the extent, Landlord is obligated to perform such obligations or Landlord has assumed such liabilities, as the case may be, pursuant to the terms of such sublease to Landlord.

(f) In the case of a proposed sublease, Tenant shall not sublet any space to a third party (i) at a Net Effective Rental which is less (on a per rentable square foot basis) than 90% of the Net Effective Rental (on a per rentable square foot basis) specified in Tenant's Offer Notice with respect to such space or (ii) on terms which include different proportionate shares, base years and/or base amounts for any escalation rent or (iii) for a term commencing later than 9 months after the date of the proposed commencement date set forth in Tenant's Offer Notice, without, in any such case, complying once again with all of the provisions of this Section 5.02 and re-offering such space to Landlord at such lower rental or on such terms. In the case of a proposed assignment, Tenant shall not assign this Lease to a third party (i) on economic terms (including any consideration paid or received by Tenant and any concessions granted by Tenant) that differ, on a net effective basis, by more than 10% from the economic terms (including any consideration paid or received by Tenant and any concessions granted by Tenant) specified in Tenant's Offer Notice or (ii) on terms including an effective date occurring later than 9 months after the date of the proposed effective date set forth in Tenant's Offer Notice, without, in either case, complying once again with all of the provisions of this Section 5.02 and re-offering to assign this Lease to Landlord on such terms. " Net Effective Rental " means, with respect to any desired or actual sublease, one year's worth of the amortized cash flow which would be derived from such sublease, determined by spreading the Net Present Rent Value of such sublease ratably on a monthly basis over the term of such desired or actual sublease using the Interest Rate in effect as of the date of Tenant's Offer Notice. " Net Present Rent Value " means, with respect to any such sublease, the net present value, determined as of the desired or actual commencement date of such desired or actual sublease, using a discount rate of the Interest Rate in effect as of the date of Tenant's Offer Notice, of the aggregate of all rent and additional rent (other than any escalation rent calculated by determining increases over a base year or base amount, which shall be addressed pursuant to clause (ii) above of this Section 5.02(f)) payable to Tenant under the desired or actual sublease, discounted from the date that any such payment would have been made under such desired or actual sublease to the commencement date of such desired or actual sublease, after deducting therefrom the amount of all tenant inducements (such as, by way of example only, direct payments, work allowances, work letters and rent abatements) that are (or will be) granted to the subtenant thereunder, discounted from the date that such tenant inducements were to have been given to the commencement date of such desired or actual sublease.

(g) If Landlord does not timely exercise any of Landlord's options under this Section 5.02, and if Tenant has not within 270 days after the giving of the applicable Tenant's Offer Notice entered into a binding agreement to sublease or assign (which sublease or assignment shall be conditioned upon Landlord's consent thereto), then Tenant shall not sublet any space to a third party or assign this Lease to a third party (other than pursuant to Sections 5.01(b) or (c)) without complying once again with all of the provisions of this Section 5.02 and re-offering such space to Landlord.

**5.03 Assignment and Subletting Procedures.** (a) If Tenant delivers to Landlord a Tenant's Offer Notice with respect to any proposed assignment of this Lease or subletting of all or part of the Premises and Landlord does not timely exercise any of its options under Section 5.02, and Tenant thereafter desires to assign this Lease or sublet the space specified in Tenant's Offer Notice, Tenant shall notify Landlord (a "Transfer Notice") of such desire, which notice shall be accompanied by (i) a copy of the proposed general form of assignment or sublease and all related agreements, or an agreed term sheet which does not have to be signed by Tenant and the proposed subtenant or assignee, (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, (iii) current financial information with respect to the proposed assignee or subtenant, including without limitation, its most recent financial statements and (iv) such other information as Landlord may reasonably request, and Landlord's consent to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided that:

(i) In Landlord's reasonable judgment the proposed assignee or subtenant will use the Premises in a manner that (A) is in keeping with the then standards of the Building, (B) is limited to the use expressly permitted under this Lease, and (C) will not violate any negative covenant as to a particular use contained in any other lease of space in the Building notice of which has been previously delivered to Tenant (and provided that general office uses may not be so prohibited).

(ii) The proposed assignee or subtenant is, in Landlord's judgment, a reputable person or entity with sufficient financial worth considering the responsibility involved.

(iii) To the extent Landlord then has available or reasonably expects within the next 4 months to have available, comparable space in the Building for a comparable term, neither the proposed assignee or sublessee, nor any affiliate of such assignee or sublessee, is then a tenant or occupant of any part of the Building.

(iv) To the extent Landlord then has available or reasonably expects within the next 4 months to have available, comparable space in the Building for a comparable term, the proposed assignee or sublessee is not a person with whom Landlord is then negotiating or has within the prior 6 months negotiated to lease space in the Building.

(v) There shall not be more than 4 occupants (including Tenant) on the 37th Floor Premises, or more than 2 subtenants on the 40th Floor Premises.

(vi) Tenant shall reimburse Landlord within 30 days after demand for any reasonable costs incurred by Landlord in connection with said assignment or sublease, including, without limitation, the costs of making investigations as to the acceptability of the proposed assignee or subtenant, and legal costs incurred in connection with the granting of any requested consent.

Notwithstanding anything to the contrary contained herein, clauses (iii) and (iv) of this Section 5.03(a) shall not apply from and after the date that Tenant completes Tenant's Initial Work (as defined in the 55 HY Lease) under the 55 HY Lease, and legally occupies the Premises (as defined in the 55 HY Lease) for the conduct of Tenant's business so long as Tenant is an Intercept Tenant.

(b) Landlord shall, within 30 days following receipt of a Transfer Notice from Tenant, advise Tenant of Landlord's approval or disapproval of such proposed assignment or sublease. If Landlord shall fail to approve or disapprove such proposed assignment or sublease within such 30 day period, Tenant may give to Landlord a notice of such failure which shall contain a legend in not less than 14 point font bold upper case letters as follows: "**FAILURE TO APPROVE OR DISAPPROVE THE PROPOSED [ASSIGNMENT/SUBLEASE] WITHIN 5 BUSINESS DAYS SHALL RESULT IN LANDLORD'S DEEMED APPROVAL OF SUCH [ASSIGNMENT/SUBLEASE]**", and, if Landlord shall fail to approve or disapprove such proposed assignment or sublease within such 5 Business Day period, Landlord shall be deemed to have consented to the assignment or sublease in question. If Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver the assignment or sublease to which Landlord consented within 90 days after the giving of such consent, then Tenant shall again comply with this Article 5 before assigning this Lease or subletting all or part of the Premises.

**5.04 General Provisions.** (a) If this Lease is assigned, whether or not in violation of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof are sublet or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected against Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 5.01(a), or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease.

(b) No assignment or transfer shall be effective until the assignee delivers to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee assumes Tenant's obligations under this Lease effective as of the date of such assignment. Prior to the effective date of such assignment, the assignee shall deliver to Landlord evidence that the assignee, as Tenant hereunder, has complied with the requirements of Sections 7.02 and 7.03.

(c) Notwithstanding any assignment or transfer, whether or not in violation of this Lease, and notwithstanding the acceptance of any Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant and each successor Tenant shall remain fully liable for the payment of the Rent and the performance of all of Tenant's other obligations under this Lease. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant shall not be discharged, released or impaired in any respect by any agreement made by Landlord extending the time to perform, or otherwise modifying, any of the obligations of Tenant under this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of Tenant under this Lease; provided, that in the case of any modification of this Lease made after the date of an assignment or transfer (other than pursuant to Section 5.01(b) or Section 5.01(c)), if such modification increases or enlarges the obligations of Tenant, other than to a *de minimis* extent, then any prior Tenant under this Lease shall not be liable under or bound by such increase or enlargement to which it has not consented (but shall continue to be liable under this Lease as though such modification were never made).

(d) Each subletting by Tenant shall be subject to the following:

(i) No subletting shall be for a term (including any renewal or extension options contained in the sublease) ending later than one day prior to the applicable Expiration Date.

(ii) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until there has been delivered to Landlord, both (A) an executed counterpart of such sublease, and (B) a certificate of insurance evidencing that (x) Landlord is an additional insured under the insurance policies required to be maintained by occupants of the Premises pursuant to Section 7.02, and (y) there is in full force and effect, the insurance otherwise required by Sections 7.02 and 7.03.

(iii) Subject to Section 5.06, each sublease shall provide that it is subject and subordinate to this Lease, and that in the event of termination, reentry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be liable for, subject to or bound by any item or matter of the type that a Successor Landlord is not so liable for, subject to or bound by in the case of an attornment by Tenant to a Successor Landlord under Section 6.01(a).

(e) Each sublease shall provide that the subtenant may not assign its rights thereunder or further sublet the space demised under the sublease, in whole or in part, without Landlord's consent and without complying with all of the terms and conditions of this Article 5, including, without limitation, Section 5.04, which for purposes of this Section 5.04(e) shall be deemed to be appropriately modified to take into account that the transaction in question is an assignment of the sublease or a further subletting of the space demised under the sublease, as the case may be. Notwithstanding the foregoing, any direct subtenant of Tenant (but not an indirect subtenant of Tenant (i.e., a subtenant of a subtenant)) subleasing at least 50% of the rentable square footage of the 37th Floor Premises shall be permitted to further sublease the portion of the Premises sublet by such subtenant, in whole or in part, or to assign its sublease, under the same terms and conditions as Tenant would be subject to under this Lease, except that the rights granted to Tenant under Section 5.06 shall not be available to any subtenant.

(f) Tenant shall not publicly advertise the availability of the Premises or any portion thereof as sublet space or by way of an assignment of this Lease, without first obtaining Landlord's consent (but Tenant may list with reputable brokers or include in trade or industry computerized listing services the Premises without Landlord's approval), which consent shall not be unreasonably withheld or delayed provided that Tenant shall in no event advertise a proposed rental rate for all or any portion of the Premises or any description of such a rental rate.

**5.05** Assignment and Sublease Profits. (a) If the aggregate of the amounts payable as fixed rent and as additional rent on account of PILOT, Additional Tax Payments, Impositions, Taxes, Operating Expenses and electricity by a subtenant under a sublease of any part of the Premises (excluding a sublease made pursuant to Sections 5.01(c)) and the amount of any Other Sublease Consideration payable to Tenant by such subtenant, whether received in a lump-sum payment or otherwise, shall be in excess of Tenant's Basic Cost therefor at that time then, promptly after the collection thereof, Tenant shall pay to Landlord in monthly installments as and when collected, as Additional Charges, 50% of such excess. Tenant shall deliver to Landlord within 60 days after the end of each calendar year and within 60 days after the expiration or earlier termination of this Lease a statement specifying each sublease in effect during such calendar year or partial calendar year, the rentable area demised thereby, the term thereof and a computation in reasonable detail showing the calculation of the amounts paid and payable by the subtenant to Tenant, and by Tenant to Landlord, with respect to such sublease for the period covered by such statement. " Tenant's Basic Cost " for sublet space at any time means the sum of (i) the portion of the Fixed Rent and Recurring Additional Charges which is attributable to the sublet space, plus (ii) the amount payable by Tenant on account of electricity in respect of the sublet space, plus (iii) the amount of any costs reasonably incurred by Tenant in making changes in the layout and finish of the sublet space for the subtenant and any work allowance granted by Tenant to the subtenant, plus (iv) the amount of any actual reasonable brokerage commissions (it being agreed that 150% of one full standard commission on a sublease transaction involving co-brokers is a reasonable commission) and reasonable legal fees or any other marketing costs associated with subleasing the space paid by Tenant in connection with the sublease. " Other Sublease Considerations " means all sums paid for the furnishing of services by Tenant and the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property (excluding any of the same which were part of Tenant's Initial Work) less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof, amortized or depreciated in accordance with GAAP.

(b) Upon any assignment of this Lease (other than an assignment made pursuant to Sections 5.01(b) or (c) ), Tenant shall pay to Landlord 50% of the Assignment Consideration received by Tenant for such assignment, after deducting therefrom customary and reasonable closing expenses. " Assignment Consideration " means an amount equal to all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment (including, without limitation, sums paid for the furnishing of services by Tenant and the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property (excluding any of the same which were part of Tenant's Initial Work), less, in the case of a sale thereof, the then net unamortized or undepreciated cost thereof, amortized or depreciated in accordance with GAAP).

(c) At Landlord's option, exercisable by written notice to Tenant at any time, the provisions of Section 5.05(a) and Section 5.05(b) shall be automatically null and void.

**5.06 Eligible Subtenant; Non-Disturbance.** (a) Landlord shall, within 30 days after Tenant's written request (which request shall be accompanied by a fully executed counterpart of the Eligible Sublease and such other information and certifications as Landlord may reasonably request in order to determine that the conditions of this Section 5.06 have been satisfied), deliver to Tenant and the subtenant under the Eligible Sublease (the "Eligible Subtenant") a non-disturbance agreement substantially in the form attached hereto as Exhibit S (a "Landlord's Non-Disturbance Agreement"). Following the subtenant's execution and delivery of the Landlord's Non-Disturbance Agreement, Landlord shall promptly execute and deliver a counterpart to the subtenant. Landlord's actual reasonable out-of-pocket costs and expenses in connection with the foregoing (including, without limitation, reasonable attorney's fees) shall be paid by Tenant within 30 days after receipt of an invoice therefor.

(b) As used herein, "Eligible Sublease" shall mean a direct sublease which (A) is between Tenant and a subtenant which is not an affiliate of Tenant, and, as of the execution of the Eligible Sublease, has a net worth, computed in accordance with GAAP, equal to or greater than 30 times the sum of the annual Fixed Rent then payable hereunder and all of the Additional Charges payable for the preceding calendar year, in each case, allocable to the portion of the Premises that is the subject of the Eligible Sublease (without giving effect to any free rent or rent abatement), (B) demises the entire 37<sup>th</sup> Floor Premises and (D) has an initial sublease term (i.e., not including any renewals) that expires on the day immediately preceding the 37th Floor Expiration Date.

Notwithstanding anything to the contrary herein contained, it is understood and agreed that Landlord shall have no obligation to deliver a Landlord's Non-Disturbance Agreement during the continuance of any default which continues beyond applicable notice and cure periods.

**5.07 Disputes.** Any dispute between Landlord and Tenant arising under this Article 5 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

## ARTICLE 6

### Subordination; Default; Indemnity

**6.01 Subordination.** (a) Subject to the provisions of Section 6.01(c), this Lease is subject and subordinate to each mortgage (a "Superior Mortgage") and each underlying lease (a "Superior Lease") which may now or hereafter affect all or any portion of the Project or any interest therein and to each document or instrument to which any such Superior Mortgage or Superior Lease is subordinate. The lessor under a Superior Lease is called a "Superior Lessor" and the mortgagee under a Superior Mortgage is called a "Superior Mortgagee". Tenant shall execute, acknowledge and deliver any commercially reasonable instrument reasonably requested by Landlord, a Superior Lessor or Superior Mortgagee to evidence such subordination, but no such instrument shall be necessary to make such subordination effective (provided, that such instrument shall not violate the conditions described in clauses (i) through (iv) of the immediately succeeding sentence). Tenant shall execute any amendment of this Lease requested by a Superior Mortgagee or a Superior Lessor, provided such amendment shall not (i) reduce or extend the Term, (ii) increase the Rent, (iii) reduce the area of the Premises, or (iv) other than to a *de minimis* extent, increase Tenant's obligations or decrease Tenant's rights under this Lease. In the event of the enforcement by a Superior Mortgagee of the remedies provided for by law or by such Superior Mortgage, or in the event of the termination or expiration of a Superior Lease, Tenant, upon request of such Superior Mortgagee, Superior Lessor or any person succeeding to the interest of such mortgagee or lessor (each, a "Successor Landlord"), shall automatically become the tenant of such Successor Landlord without change in the terms or provisions of this Lease (it being understood that Tenant shall, if requested, enter into a new lease on terms identical to those in this Lease); provided, that any Successor Landlord shall not be (i) liable for any act, omission or default of any prior landlord (including, without limitation, Landlord), except to the extent that any such non-monetary default of an obligation of Landlord under this Lease continues after the date that Successor Landlord succeeds to Landlord's interest in the Project and Successor Landlord has been given written notice and a reasonable opportunity to cure same; (ii) liable for the return of any moneys paid to or on deposit with any prior landlord (including, without limitation, Landlord), except to the extent such moneys or deposits are delivered to such Successor Landlord; (iii) subject to any offset, claims or defense that Tenant might have against any prior landlord (including, without limitation, Landlord); (iv) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including, without limitation, Landlord); (v) bound by any covenant to perform or complete any construction in connection with the Project or the Premises or to pay any sums to Tenant in connection therewith; (vi) bound by any obligation to make any payment to Tenant; or (vii) bound by any waiver or forbearance under, or any amendment, modification, abridgment, cancellation or surrender of, this Lease made without the consent of such Successor Landlord. Upon request by such Successor Landlord, Tenant shall execute and deliver an instrument or instruments, reasonably requested by such Successor Landlord (at no out-of-pocket cost to Tenant other than any legal fees Tenant may incur in connection therewith), confirming the attornment provided for herein, but no such instrument shall be necessary to make such attornment effective.

(b) Tenant shall give each Superior Mortgagee and each Superior Lessor a copy of any notice of default served upon Landlord, provided that Tenant has been notified of the address of such mortgagee or lessor. If Landlord fails to cure any default as to which Tenant is obligated to give notice pursuant to the preceding sentence within the time provided for in this Lease, then each such mortgagee or lessor shall have an additional 30 days after receipt of such notice within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such 30 days, any such mortgagee or lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including, without limitation, commencement of foreclosure proceedings or eviction proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated and Tenant shall not exercise any other rights or remedies under this Lease or otherwise while such remedies are being so diligently pursued. Nothing herein shall be deemed to imply that Tenant has any right to terminate this Lease or any other right or remedy, except as may be otherwise expressly provided for in this Lease.

(c) Landlord represents to Tenant that, as of the date of this Lease, there are no Superior Mortgages or Superior Leases affecting the Project except for Superior Mortgages and Superior Leases in connection with a financing arrangement with the IDA and Superior Mortgages in connection with a financing with Deutsche Bank AG, New York Branch and Goldman Sachs Mortgage Company.

**6.02**     **Estoppel Certificate**. Each party shall, at any time and from time to time, within 10 Business Days after request by the other party, execute and deliver to the requesting party (or to such person or entity as the requesting party may designate) a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the Rent Commencement Date, Expiration Date, the rentable square footage of each floor and each partial floor of the Premises as determined in accordance with Article 1 of this Lease, and the dates to which the Fixed Rent and Additional Charges have been paid and stating whether or not, to the actual knowledge of the party signing such statement, the other party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which such party has knowledge, it being intended that any such statement shall be deemed a representation and warranty to be relied upon by the party to whom such statement is addressed. Each party also shall include or confirm in any such statement such other information concerning this Lease as the other party may reasonably request.

**6.03**     **Default**. This Lease and the term and estate hereby granted are subject to the limitation that:

(a)       if Tenant defaults in the payment of any Rent, and such default continues for (i) with respect to Fixed Rent and/or Additional Tax Payments, Impositions Payments, Operating Payments and either PILOT Payments or Tax Payments, as applicable, 5 Business Days after Landlord gives to Tenant a notice specifying such default or (ii) with respect to Additional Charges other than those described in clause (i) above, 10 Business Days after Landlord gives to Tenant a notice specifying such default, or

(b)       if Tenant defaults in the keeping, observance or performance of any covenant or agreement contained in this Lease (other than a default of the character referred to in Sections 6.03(a), (c), (d), or (e)), and if such default continues and is not cured within 30 days after Landlord gives to Tenant a notice specifying the same, or, in the case of a default which for causes beyond Tenant's reasonable control cannot with due diligence be cured within such period of 30 days, if Tenant shall not during such period, (i) advise Landlord of Tenant's intention duly to institute all steps necessary to cure such default and (ii) institute and thereafter diligently prosecute to completion all steps necessary to cure the same, or

(c)       if this Lease or the estate hereby granted would, by operation of law or otherwise, devolve upon or pass to any person or entity other than Tenant, except as expressly permitted by Article 5, or

(d)       if Tenant shall abandon the Premises (and the fact that any of Tenant's Property remains in the Premises shall not be evidence that Tenant has not abandoned the Premises), or

(e)       if a default shall occur and have been cured, and if a similar default shall occur and have been cured, then if a third similar default shall occur within 365 days after the occurrence of the first such default, whether or not such third default is cured within the applicable grace period, or

(f) if Tenant fails to deliver to Landlord the Letter of Credit within 30 days of the date of this Lease in accordance with Section 2.11(a),

then, in any of such cases, in addition to any other remedies available to Landlord at law or in equity, Landlord shall be entitled to give to Tenant a notice of intention to terminate this Lease at the expiration of 5 Business Days from the date of the giving of such notice, and, in the event such notice is given, this Lease and the term and estate hereby granted shall terminate upon the expiration of such 5 Business Days with the same effect as if the last of such 5 Business Days were the Expiration Date, but Tenant shall remain liable for damages as provided herein or pursuant to law. Landlord agrees that any notice of default required to be delivered under clauses (a) and (b) above shall (i) specify the applicable default and (ii) if monetary in nature, specify the amount required to be paid to cure such default.

**6.04 Re-entry by Landlord**. If Tenant defaults in the payment of any Rent and such default continues for 5 Business Days following notice from Landlord specifying such default, or if this Lease shall terminate as in Section 6.03 provided, Landlord or Landlord's agents may immediately or at any time thereafter re-enter into or upon the Premises, or any part thereof, either by summary dispossess proceedings or by any suitable action or proceeding at law, without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises. The words "re-enter" and "re-entering" as used in this Lease are not restricted to their technical legal meanings. Upon such termination or re-entry, Tenant shall pay to Landlord any Rent then due and owing (in addition to any damages payable under Section 6.05).

**6.05 Damages**. If this Lease is terminated under Section 6.03, or if Landlord re-enters the Premises under Section 6.04, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

(a) a sum which, at the time of such termination, represents the then value of the excess, if any, of (1) the aggregate of the Rent which, had this Lease not terminated, would have been payable hereunder by Tenant for the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date over (2) the aggregate fair rental value of the Premises for the same period (for the purposes of this clause (a) the amount of Recurring Additional Charges shall, for each calendar year ending after such termination or re-entry, be deemed to be an amount equal to the amount of Recurring Additional Charges payable by Tenant for the calendar year immediately preceding the calendar year in which such termination or re-entry shall occur), or

(b) sums equal to the Rent that would have been payable by Tenant through and including the Expiration Date had this Lease not terminated or had Landlord not re-entered the Premises, payable upon the due dates therefor specified in this Lease; provided, that if Landlord shall relet all or any part of the Premises for all or any part of the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this Lease and of re-entering the Premises and of securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Premises for new tenants, brokers' commissions, and all other expenses properly chargeable against the Premises and the rental therefrom in connection with such reletting, it being understood that any such reletting may be for a period equal to or shorter or longer than said period; provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord under this Lease, (ii) in no event shall Tenant be entitled, in any suit for the collection of damages pursuant to this Section 6.05(b), to a credit in respect of any net rents from a reletting except to the extent that such net rents are actually received by Landlord on account of any period that is the subject of such suit, (iii) if the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot rentable area basis shall be made of the rent received from such reletting and of the expenses of reletting, and (iv) Landlord shall have no obligation to so relet the Premises and Tenant hereby waives any right Tenant may have, at law or in equity, to require Landlord to so relet the Premises.

Suit or suits for the recovery of any damages payable hereunder by Tenant, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall require Landlord to postpone suit until the date when the Term would have expired but for such termination or re-entry.

**6.06 Other Remedies.** (a) Nothing contained in this Lease shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Anything in this Lease to the contrary notwithstanding, during the continuation of any default by Tenant, Tenant shall not be entitled to exercise any rights or options, or to receive any funds or proceeds being held, under or pursuant to this Lease.

(b) Anything contained in this Lease to the contrary notwithstanding, in no event shall Tenant or Landlord be entitled to claim or recover any consequential, exemplary or punitive damages from the other in any action arising under this Lease (except as set forth in Section 6.10).

**6.07 Right to Injunction.** In the event of any breach or threatened breach by Tenant or Landlord of any of its obligations under this Lease, the other party shall also have the right of injunction or, subject to the terms of this Lease, to invoke any other right or remedy available at law or in equity. The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may lawfully be entitled, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not herein provided for.

**6.08 Certain Waivers.** Tenant waives and surrenders all right and privilege that Tenant might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease after Tenant is dispossessed or ejected therefrom by process of law or under the terms of this Lease or after any termination of this Lease. Tenant also waives the provisions of any law relating to notice and/or delay in levy of execution in case of any eviction or dispossession for nonpayment of rent, and the provisions of any successor or other law of like import. Landlord and Tenant each waive trial by jury in any action in connection with this Lease.

**6.09** **No Waiver**. Failure by either party to declare any default immediately upon its occurrence or delay in taking any action in connection with such default shall not waive such default but such party shall have the right to declare any such default at any time thereafter. Any amounts paid by Tenant to Landlord may be applied by Landlord, in Landlord's discretion, to any items then owing by Tenant to Landlord under this Lease. Receipt by Landlord of a partial payment shall not be deemed to be an accord and satisfaction (notwithstanding any endorsement or statement on any check or any letter accompanying any check or payment) nor shall such receipt constitute a waiver by Landlord of Tenant's obligation to make full payment. No act or thing done by Landlord or its agents shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord and by each Superior Lessor and Superior Mortgagee whose lease or mortgage provides that any such surrender may not be accepted without its consent.

**6.10** **Holding Over**. (i) If Tenant holds over in the 40th Floor Premises without the consent of Landlord after the 40th Floor Expiration Date or earlier termination of this Lease, Tenant shall (a) pay as holdover rental for each month of the holdover tenancy an amount equal to the Applicable Percentage multiplied by the greater of (i) the fair market rental value of the 40th Floor Premises for such month (as reasonably determined by Landlord) or (ii) the Rent which Tenant was obligated to pay for the 40th Floor Premises for the month immediately preceding the end of the Term; and (b) if such holding over shall continue for more than ninety (90) days following the 40th Floor Expiration Date, be liable to Landlord for and indemnify Landlord against (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant, (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant and (iii) any claim for damages by any New Tenant. No holding over by Tenant after the Term shall operate to extend the Term, and the acceptance of any rent paid by Tenant pursuant to this Section 6.10 shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding. The provisions of this Section 6.10 shall be deemed to be an "agreement expressly providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York. Tenant expressly waives, for itself and for any person or entity claiming through or under Tenant, any rights which Tenant or any such person or entity may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions of this Lease. "Applicable Percentage" means (x) for any period of such holdover commencing after the expiration or termination of this Lease through the 60th such day, 125%, (y) for the next 60 days of such holdover, 150%, and (z) thereafter, 200%.

(ii) If Tenant holds over in the 37th Floor Premises without the consent of Landlord after the 37th Floor Expiration Date or earlier termination of this Lease, Tenant shall (a) pay as holdover rental for each month of the holdover tenancy an amount equal to the Applicable Percentage multiplied by the greater of (i) the fair market rental value of the 37th Floor Premises for such month (as reasonably determined by Landlord) or (ii) the Rent which Tenant was obligated to pay for the 37th Floor Premises for the month immediately preceding the end of the Term; and (b) if such holding over shall continue for more than ninety (90) days following the 37th Floor Expiration Date, be liable to Landlord for and indemnify Landlord against (i) any payment or rent concession which Landlord may be required to make to any New Tenant by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant, (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant and (iii) any claim for damages by any New Tenant. No holding over by Tenant after the Term shall operate to extend the Term, and the acceptance of any rent paid by Tenant pursuant to this Section 6.10 shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding. The provisions of this Section 6.10 shall be deemed to be an "agreement expressly providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York. Tenant expressly waives, for itself and for any person or entity claiming through or under Tenant, any rights which Tenant or any such person or entity may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions of this Lease. "Applicable Percentage" means (x) for any period of such holdover commencing after the expiration or termination of this Lease through the 60th such day, 125%, (y) for the next 60 days of such holdover, 150%, and (z) thereafter, 200%.

**6.11 Attorneys' Fees.** If any action or proceeding is brought by Landlord or Tenant to enforce its rights under this Lease, the prevailing party in such action shall be entitled to collect its reasonable attorneys' fees and costs of suit from the other party.

**6.12 Nonliability and Indemnification.** (a) Neither Landlord, any Superior Lessor or any Superior Mortgagee, nor any partner, director, officer, shareholder, principal, board member, agent or employee of Landlord, any Superior Lessor or any Superior Mortgagee (whether disclosed or undisclosed), shall be liable to Tenant for (i) any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, nor shall the aforesaid parties be liable for any loss of or damage to property of Tenant or of others entrusted to employees of Landlord; provided, that, except to the extent of the release of liability and waiver of subrogation provided in Section 7.03 hereof, the foregoing shall not be deemed to relieve Landlord of any liability to the extent resulting from the negligence or willful misconduct of Landlord, its agents or employees in the operation or maintenance of the Premises or the Building, (ii) any loss, injury or damage described in clause (i) above caused by other tenants, occupants or persons in, upon or about the Building, or caused by operations in construction of any private, public or quasi-public work, or (iii) even if due to negligence or willful misconduct, consequential damages arising out of any loss of use of the Premises or any equipment, facilities or other Tenant's Property therein or otherwise.

(b) Subject to the provisions of Section 7.03, Tenant shall indemnify and hold harmless Landlord, all Superior Lessors and all Superior Mortgagees and each of their respective partners, members, directors, officers, shareholders, principals, board members, agents and employees (each, a “Landlord Indemnified Party”), from and against any and all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created, in or about the Premises, (ii) any act, omission or negligence of Tenant or any person claiming through or under Tenant or any of their respective partners, directors, officers, agents, employees or contractors, (iii) any accident, injury or damage occurring in, at or upon the Premises (or outside the Premises if arising from or in connection with Tenant’s installations in, or use of, areas outside the Premises), (iv) any default by Tenant in the performance of any of Tenant’s obligations under this Lease, (v) the performance of Tenant’s Initial Work and (vi) any brokerage commission or similar compensation claimed to be due by reason of any proposed subletting or assignment by Tenant (irrespective of the exercise by Landlord of any of the options in Section 5.02(b)); in each case, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys’ fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 applies) or willful misconduct of any Landlord Indemnified Party. If any action or proceeding is brought against any Landlord Indemnified Party by reason of any such claim, Tenant, upon notice from such Landlord Indemnified Party shall resist and defend such action or proceeding by counsel reasonably satisfactory to such Landlord Indemnified Party, and counsel selected by Tenant’s insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Landlord Indemnified Party.

(c) Subject to the provisions of Section 7.03, Landlord shall indemnify and hold harmless Tenant and Tenant’s partners, members, directors, officers, shareholders, principals, agents and employees (each, a “Tenant Indemnified Party”), from and against any and all claims arising from or in connection with (i) any negligence or willful misconduct of Landlord or its agents, servants or employees in connection with the operation or management of the common areas of the Building and (ii) any default by Landlord in the performance of any of Landlord’s obligations under this Lease, in each case together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys’ fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 applies) or willful misconduct of any Tenant Indemnified Party. If any action or proceeding is brought against any Tenant Indemnified Party by reason of any such claim, Landlord, upon notice from such Tenant Indemnified Party, shall resist and defend such action or proceeding by counsel reasonably satisfactory to such Tenant Indemnified Party, and counsel selected by Landlord’s insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Tenant Indemnified Party.

## ARTICLE 7

### Insurance; Casualty; Condemnation

**7.01** Compliance with Insurance Standards . (a) Tenant shall not violate, or permit the violation of, any condition imposed by any insurance policy then issued in respect of the Project and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises, which would subject Landlord, any Superior Lessor or any Superior Mortgagee to any liability or responsibility for personal injury or death or property damage, or which would increase any insurance rate in respect of the Project over the rate which would otherwise then be in effect or which would result in insurance companies of good standing refusing to insure the Project in amounts reasonably satisfactory to Landlord, or which would result in the cancellation of, or the assertion of any defense by the insurer in whole or in part to claims under, any policy of insurance in respect of the Project, provided, however, that in no event shall the mere use of the Premises for customary and ordinary office purposes, as opposed to the manner of such use, constitute a breach by Tenant of the provisions of this Section 7.01.

(b) If, by reason of any failure of Tenant to comply with this Lease, the premium(s) on Landlord's insurance on the Project shall be higher than they otherwise would be, Tenant shall reimburse Landlord, within 30 days after demand, for that part of such premium(s) attributable to such failure on the part of Tenant. A schedule or "make up" of rates for the Project or the Premises, as the case may be, issued by any insurance boards making rates for insurance for the Project or the Premises, as the case may be, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to the Project or the Premises, as the case may be.

**7.02** Tenant's Insurance . Tenant shall maintain at all times during the Term insurance coverage meeting the requirements set forth in Sections (A) and (C) of Exhibit J attached hereto. The limits of such insurance shall not limit the liability of Tenant. Tenant's insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of Landlord. Landlord's insurance shall apply in excess of all insurance coverage required of Tenant in accordance with this Section 7.02 and Exhibit J, whether such insurance is primary, contingent or on any other basis, and regardless of whether such Tenant's insurance coverage is valid or collectible. Tenant shall deliver to Landlord and all Additional Insureds (as defined in Exhibit J), prior to Tenant having access to the Building (pursuant to the provisions of Section 4.01(b) or otherwise), fully paid-for policies or certificates of insurance for all such required insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent. An Accord Form Certificate of Insurance (Accord 25 for Liability and Accord 27 for Property) or its equivalent shall be deemed reasonably satisfactory to Landlord. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall endeavor to deliver to Landlord and any Additional Insureds such renewal policy or a certificate thereof at least 30 days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in New York State (except the Products and Completed Operations Liability policy, which shall not be required to be issued by a company authorized to do business in New York State) and rated by Best's Insurance Reports or any successor publication of comparable standing as A/VIII or better or the then equivalent of such rating, and all such policies shall contain a provision whereby the same cannot be canceled, allowed to lapse or modified unless Landlord and any Additional Insureds are given at least 30 days prior written notice of such cancellation, lapse or modification. Tenant shall cooperate with Landlord in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required to recover any such insurance moneys. Landlord may from time to time require that the amount of the insurance to be maintained by Tenant under this Section 7.02 be increased and/or that Tenant provide additional insurance coverage, so that the insurance maintained by Tenant adequately protects Landlord's interest; provided, that any such increased amounts or additional coverage shall not be materially in excess of the amounts and coverage landlords of similar First Class Office Buildings require their tenants to maintain. In the event Tenant fails to maintain the limits or coverages as required herein, Landlord may obtain such insurance as an agent of the Tenant without prior notice. Any premiums paid by Landlord in connection with such insurance obtained by Landlord together with interest thereon at the Interest Rate from the date paid by Landlord until the date reimbursed by Tenant shall be payable by Tenant to Landlord.

**7.03 Subrogation Waiver.** Landlord and Tenant shall each include in each of its insurance policies (insuring the Building in case of Landlord, and insuring Tenant's Property and Fixtures in the case of Tenant, against loss, damage or destruction by fire or other casualty) a waiver of the insurer's right of subrogation against the other party during the Term or, if such waiver should be unobtainable or unenforceable, (a) an express agreement that such policy shall not be invalidated if the insured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty or (b) any other form of permission for the release of the other party. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged. Each party hereby (x) releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property occurring during the Term to the extent to which it is, or is required to be, insured under a policy or policies containing a waiver of subrogation or permission to release liability and (y) waives all rights of recovery against the other party, whether under subrogation or otherwise, for any deductibles. Nothing contained in this Section 7.03 shall be deemed to relieve either party of any duty imposed elsewhere in this Lease to repair, restore or rebuild or to nullify any abatement of rents provided for elsewhere in this Lease. All waivers and releases for the benefit of Landlord pursuant to this Section 7.03 shall be deemed to apply to and for the benefit of, and, if applicable, shall be obtained with respect to, The Related Companies, L.P., Oxford Hudson Yards LLC, Mitsui Fudosan America, Inc., MFA 55 HY LLC, 55 Hudson Yards Member LLC and any of such entities' and Landlord's officers, agents, and employees, in addition to, and with the same effect as, the application of such provisions to Landlord.

**7.04 Condemnation.** (a) If there shall be a total taking of the Building or the Premises in condemnation proceedings or by any right of eminent domain, this Lease and the term and estate hereby granted shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be prorated and paid as of such termination date. If there shall be a taking of any material (in Landlord's reasonable judgment) portion of the Building (whether or not the Premises are affected by such taking), then Landlord may terminate this Lease and the term and estate granted hereby by giving notice to Tenant within 60 days after the date of taking of possession by the condemning authority. If there shall be a taking of the Premises of such scope (but in no event less than 20% thereof) that Tenant would, in Tenant's reasonable judgment, be unable to operate the untaken part of the Premises in a functionally equivalent manner to the manner in which Tenant operated such untaken part of the Premises prior to the taking then Tenant may terminate this Lease and the term and estate granted hereby by giving notice to Landlord within 60 days after the date of taking of possession by the condemning authority. If either Landlord or Tenant shall give a termination notice as aforesaid, then this Lease and the term and estate granted hereby shall terminate as of the date of such notice and all Rent shall be prorated and paid as of such termination date. In the event of a taking of the Premises which does not result in the termination of this Lease (i) the term and estate hereby granted with respect to the taken part of the Premises shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be appropriately abated for the period from such date to the Expiration Date and (ii) Landlord shall with reasonable diligence restore the remaining portion of the Premises (exclusive of Tenant's Property) as nearly as practicable to its condition prior to such taking.

(b) In the event of any taking of all or a part of the Building, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including, without limitation, any award made for the value of the estate vested by this Lease in Tenant or any value attributable to the unexpired portion of the Effective Period, and Tenant hereby assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award; provided, that nothing shall preclude Tenant from making a separate claim in any such condemnation proceeding for the value of all improvements, alterations and additions made to the Premises by Tenant (less the amount of the Work Allowance), and for the value of Tenant's furniture, fixtures, machinery and equipment contained in the Premises and for expenses (including moving expenses, and attorney's fees) incurred by Tenant as a result of such proceeding, provided the same does not include any value of the estate vested by this Lease in Tenant or of the unexpired portion of the Effective Period and does not reduce the amount available to Landlord or materially delay the payment thereof.

(c) If all or any part of the Premises shall be taken for a limited period, Tenant shall be entitled, except as hereinafter set forth, to that portion of the award for such taking which represents compensation for the use and occupancy of the Premises, for the taking of Tenant's Property and for moving expenses, and Landlord shall be entitled to that portion which represents reimbursement for the cost of restoration of the Premises. This Lease shall remain unaffected by such taking and Tenant shall continue to be responsible for all of its obligations under this Lease and shall continue to pay in full all Rent when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award which represents compensation for the use and occupancy of the Premises shall be apportioned between Landlord and Tenant as of the Expiration Date. Any award for temporary use and occupancy for a period beyond the date to which the Rent has been paid shall be paid to, held and applied by Landlord as a trust fund for payment of the Rent thereafter becoming due.

(d) In the event of any taking which does not result in termination of this Lease, (i) Landlord, whether or not any award shall be sufficient therefor, shall proceed with reasonable diligence to repair the remaining parts of the Building and the Premises (other than those parts of the Premises which constitute Fixtures and Tenant's Property) to substantially their former condition to the extent that the same may be feasible (subject to reasonable changes which Landlord deems desirable) and so as to constitute a complete and rentable Building and Premises and (ii) Tenant, whether or not any award shall be sufficient therefor, shall proceed with reasonable diligence to repair the remaining parts of the Premises which constitute Fixtures and Tenant's Property, to substantially their former condition to the extent that the same may be feasible, subject to reasonable changes which shall be deemed Alterations.

**7.05 Casualty.** (a) If the Building or the Premises shall be partially or totally damaged or destroyed by fire or other casualty (each, a “Casualty”) and if this Lease is not terminated as provided below, then (i) Landlord shall repair and restore the Building and the Premises (excluding all Fixtures and Tenant’s Property) with reasonable dispatch (but Landlord shall not be required to perform the same on an overtime or premium pay basis) after notice to Landlord of the Casualty and the collection of the insurance proceeds attributable to such Casualty and (ii) Tenant shall repair and restore in accordance with Section 4.02 all Fixtures and Tenant’s Property with reasonable dispatch after Landlord shall have substantially completed repair and restoration of the Building and the Premises (excluding all Fixtures and Tenant’s Property); provided, that Tenant shall repair and restore in accordance with Section 4.02 hereof all Tenant’s Property, Fixtures and improvements and betterments with reasonable dispatch immediately after the Casualty to the extent (x) such repair and restoration is necessary to permit Landlord to commence, perform and complete repair and restoration of the Building and the Premises or (y) in accordance with good construction practice, such work should be performed prior to, or concurrently with, repair and restoration of the Building and the Premises.

(b) If all or part of the Premises shall be rendered Untenantable by reason of a Casualty, the Fixed Rent and Recurring Additional Charges shall be abated in the proportion that the Untenantable area of the Premises bears to the total area of the Premises, for the period from the date of the Casualty to the earlier to occur of (i) 120 days after the date on which Landlord shall have performed its obligations under Section 7.05(a)(i), (ii) the date the Untenantable area of the Premises (or any portion thereof) is made tenantable (it being understood and agreed that the term “tenantable” for purposes of this Section 7.05 shall mean that the Premises (or any portion thereof) is in a condition which permits Tenant to occupy the same for general, administrative and executive office uses) (provided, that if the Premises (or a portion thereof) would have been tenantable at an earlier date but for Tenant having failed diligently to prosecute repairs or restoration, then the Premises (or such portion thereof) shall be deemed to have been made tenantable on such earlier date and the abatement (with respect to such portion, if applicable) shall cease) or (iii) the date Tenant or any subtenant reoccupies the Untenantable area of the Premises (or a portion thereof) for the ordinary conduct of business (in which case the Fixed Rent and the Additional Charges allocable to such reoccupied portion shall be payable by Tenant from the date of such occupancy). Landlord’s determination of the date the Premises (or a portion thereof) is tenantable shall be controlling unless Tenant disputes same by notice to Landlord within 10 Business Days after such determination by Landlord, and pending resolution of such dispute, Tenant shall pay Rent in accordance with Landlord’s determination. Nothing contained in this Section 7.05 shall relieve Tenant from any liability that may exist as a result of any Casualty.

(c) If by reason of a Casualty (i) the Building shall be so damaged or destroyed (whether or not the Premises are damaged or destroyed) that repair or restoration thereof shall require more than 365 days or the expenditure of more than 30% percent of the full insurable value of the Building (which, for purposes of this Section 7.05(c), shall mean replacement cost less the cost of footings, foundations and other structures below the street and first floors of the Building) immediately prior to the Casualty and Landlord shall give notices terminating leases or has terminated leases (including this Lease) for office space in the Building affecting not less than 75% of the then leased rentable square footage of the office space in the Building or (ii) more than 30% of the Premises shall be damaged or destroyed (as estimated in either such case by a reputable contractor, architect or engineer designated by Landlord), then in any such case Landlord may terminate this Lease by notice given to Tenant within 120 days after the Casualty.

(d) (i) Supplementing the foregoing provisions of this Section 7.05, within 90 days after Landlord has actual knowledge of any Casualty rendering 50% or more of the Premises Untenantable, Landlord shall deliver to Tenant an estimate prepared by a reputable contractor selected by Landlord, having at least 10 years' experience in such matters, setting forth such contractor's estimate as to the time and cost reasonably required to repair such damage in order to make the Premises (or the Untenantable portion thereof) no longer Untenantable. If the period set forth in any such estimate exceeds 365 days from the date of such Casualty, Tenant may terminate this Lease by notice to Landlord given not later than 30 days following Tenant's receipt of such estimate (time being of the essence). If Tenant shall timely exercise such election, this Lease and the term and estate granted hereby shall terminate on the 60th day after notice of such election is given by Tenant, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the terms of this Lease. If the time period set forth in said estimate exceeds 365 days from the date of such Casualty and Tenant has not elected to terminate this Lease as set forth above, and for any reason whatsoever (other than Unavoidable Delay or delay caused by Tenant or Tenant's employees, agents or contractors) Landlord shall not complete the repair and restoration that Landlord is obligated to perform hereunder within 90 days after the date set forth in the estimate as the date by which the repair and restoration should reasonably be completed, then Tenant shall have the further right to terminate this Lease by notice to Landlord given not later than 30 days following the last day of such 90-day period after the date set forth in the estimate (time being of the essence) and this Lease shall terminate on the 30th day after such notice is given by Tenant.

(ii) Notwithstanding the foregoing, if a Casualty rendering 50% or more of the Premises Untenantable occurs within the last 18 months prior to the 37th Floor Expiration Date and Landlord's restoration work would take more than 180 days to substantially complete (excluding restoration of any of Tenant's Property, Fixtures or Tenant's improvements and betterments), either party may terminate this Lease by notice given to the other within 60 days after the date of the Casualty (time of the essence), in which event this Lease shall terminate on the date specified in such notice. If either party timely gives such notice, the Term shall expire upon 30 days after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the provisions of this Lease. If a party fails timely to deliver such notice as aforesaid, such party shall be deemed to have waived its right to give such termination notice and such party shall have no further right to terminate this Lease under this Section 7.05(d).

(e) Landlord shall not carry any insurance on any Tenant's Property or Fixtures and shall not be obligated to repair or replace Tenant's Property or Fixtures. Tenant shall look solely to Tenant's insurance for recovery of any damage to or loss of Tenant's Property or Fixtures. Tenant shall notify Landlord promptly of any Casualty in the Premises.

(f) Any dispute between Landlord and Tenant arising under this Article 7 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

(g) This Section 7.05 shall be deemed an express agreement governing any damage or destruction of the Premises by fire or other casualty, and Section 227 of the New York Real Property Law providing for such a contingency in the absence of an express agreement, and any other law of like import now or hereafter in force, shall have no application.

**7.06** Landlord's Insurance. Landlord shall obtain and keep in full force and effect throughout the Term insurance against loss or damage by fire and other casualty to the Building as may be insurable under then available standard forms of "all-risk" insurance policies, with limits consistent with property insurance maintained by prudent owners of First Class Office Buildings. Landlord shall obtain and keep in full force and effect a commercial general liability insurance policy in respect of the Building and the conduct or operation of business therein, with limits consistent with liability insurance maintained by prudent owners of First Class Office Buildings.

## ARTICLE 8

### Miscellaneous Provisions

**8.01** Notice. All notices, demands, consents, approvals, advices, waivers or other communications which may or are required to be given by either party to the other under this Lease (each, "Notice") shall be in writing and shall be delivered by (a) personal delivery, (b) the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) a nationally recognized overnight courier, in each case addressed as follows:

If to Landlord:

Legacy Yards Tenant LP  
c/o The Related Companies, L.P.  
60 Columbus Circle, 19th Floor  
New York, New York 10023  
Attention: Jeff T. Blau, L. Jay Cross and Andrew Rosen

with a copy to each of the following:

Oxford Hudson Yards LLC  
450 Park Avenue, Suite 900  
New York, New York 10022  
Attention: Dean J. Shapiro

Oxford Properties Group\*  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 900  
Toronto, Ontario M5J 2J2 Canada  
Attention: Chief Legal Counsel

*\* and, if different than the address set forth above, to the address posted from time to time as the corporate head office of Oxford Properties Group on the website [www.oxfordproperties.com](http://www.oxfordproperties.com) to the attention of the Chief Legal Officer*

The Related Companies, L.P.  
60 Columbus Circle, 19th Floor  
New York, New York 10023  
Attention: Amy Arentowicz, Esq.

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10022  
Attention: Robert J. Sorin, Esq.

If to Tenant:

prior to the date on which Tenant occupies the Premises:

Intercept Pharmaceuticals, Inc.  
450 West 15th Street, Suite 505  
New York, New York 10011  
Attention: Bryan Yoon, Esq.

after the date on which Tenant occupies the Premises but prior to the date on which Tenant occupies its demised premises at 55 Hudson Yards, New York, New York:

Intercept Pharmaceuticals, Inc.  
10 Hudson Yards  
37th Floor  
New York, New York 10001  
Attention: Bryan Yoon, Esq.

after the date on which Tenant occupies its demised premises at 55 Hudson Yards, New York, New York:

Intercept Pharmaceuticals, Inc.  
55 Hudson Yards  
550 West 34th Street, 23rd Floor  
New York, New York 10001  
Attention: Bryan Yoon, Esq.

in each case, with a copy to:

Thompson Hine LLP  
335 Madison Avenue (12th Floor)  
New York, New York 10017  
Attention: Mario J. Suarez, Esq.

Either party may designate a different or an additional address or addresses for notices intended for such party from time to time by at least 5 days' notice to the other party. Notices from Landlord may be given by Landlord's managing agent, if any, or by Landlord's attorney. Notices from Tenant may be given by Tenant's attorney. Each Notice shall be deemed to have been given on the date such Notice is actually received as evidenced by a written receipt therefor, and in the event of failure to deliver by reason of changed address of which no Notice was given or refusal to accept delivery, as of the date of such failure.

**8.02 Rules and Regulations.** Tenant shall comply with, and Tenant shall cause its licensees, employees, contractors, agents and invitees to comply with, the rules of the Building set forth in Exhibit C, as the same may be reasonably modified or supplemented by Landlord from time to time for the safety, care and cleanliness of the Premises and the Building and for preservation of good order therein (the "Rules and Regulations"). Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be bound by any such modification or supplement to the Rules and Regulations that (i) imposes, except to a *de minimis* extent, any new or increased costs or financial obligations on Tenant (unless any such cost or financial obligation is the result of compliance with any Laws) or (ii) unreasonably affects the conduct of Tenant's business in the Premises. Landlord shall not be obligated to enforce the Rules and Regulations against Tenant or any other tenant or occupant of the Building or any other party, and Landlord shall have no liability to Tenant by reason of the violation by any tenant or other party of the Rules and Regulations; provided, that Landlord shall not enforce the Rules and Regulations in a manner which discriminates against Tenant. If any provision of the Rules and Regulations shall conflict with any provision of this Lease, such provision of this Lease shall govern.

**8.03 Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

**8.04 Certain Definitions.** (a) "Landlord" means only the owner, at the time in question, of the Building or that portion of the Building of which the Premises are a part, or of a lease of the Building or that portion of the Building of which the Premises are a part, so that in the event of any transfer or transfers of title to the Building or of Landlord's interest in a lease of the Building or such portion of the Building, the transferor shall be and hereby is relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, and it shall be deemed, without further agreement, that such transferee has assumed all obligations of Landlord during the period it is the holder of Landlord's interest under this Lease.

(b) “Landlord shall have no liability to Tenant” or words of similar import mean that Tenant is not entitled to terminate this Lease, or to claim actual or constructive eviction, partial, or total, or to receive any abatement or diminution of Rent, or to be relieved in any manner of any of its other obligations under this Lease, or to be compensated for loss or injury suffered or to enforce any other right or kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to Tenant’s use or occupancy of the Premises.

(c) “Unavoidable Delay” means Landlord’s inability to fulfill or delay in fulfilling any of its obligations under this Lease to be performed by Landlord or Landlord’s inability to make or delay in making any repairs, additions, alterations, improvements or decorations or Landlord’s inability to supply or delay in supplying any equipment or fixtures, if Landlord’s inability or delay is due to or arises by reason of accident, strikes or labor troubles, or weather conditions that render the performance of any such obligation or work unsafe or impracticable, or any cause whatsoever beyond Landlord’s reasonable control, including, without limitation, governmental preemption in connection with a national emergency or other actions of a governmental or quasi-governmental authority, Laws, shortages of materials, unavailability of labor, fuel, water, electricity or materials, or delays caused by tenants or other occupants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty, but “Unavoidable Delay” shall not include any inability or delay resulting from insufficient funds.

(d) Whenever any provision of this Lease refers to a specified amount “Subject to CPI Increases”, such amount shall be adjusted as of each anniversary of January 1, 2017. Each such adjustment shall be made by multiplying the applicable amount by the greater of (a) 1.0, or (b) a fraction, the numerator of which shall be the CPI as most recently published prior to the date of such adjustment and the denominator of which shall be the CPI for January, 2016. The term “CPI” shall mean Consumer Price Index for All Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100, or any successor to such index, appropriately adjusted, or if no such index or successor index shall be published, such similar index, appropriately adjusted, as shall reasonably be designated by Landlord and consented to by Tenant, such consent not to be unreasonably withheld, conditioned or delayed.

**8.05 Quiet Enjoyment.** Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, subject to the other terms of this Lease and to Superior Leases and Superior Mortgages, provided that this Lease is in effect.

**8.06 Limitation of Landlord’s and Tenant’s Personal Liability.** (a) Tenant shall look solely to Landlord’s interest in the Building (including, without limitation, the rents and profits arising therefrom) for the recovery of any judgment against Landlord, and no other property or assets of Landlord or Landlord’s members, partners, shareholders, principals, officers or directors, direct or indirect, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to this Lease. In no event shall Tenant bring any action against any of Landlord’s members, managers, limited partners, shareholders, directors, officers and principals, direct and indirect, for any claims arising out of the Lease.

(b) No property or assets of Tenant's members, partners, shareholders, principals, officers or directors, direct or indirect, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies under or with respect to this Lease. In no event shall Landlord bring any action against any of Tenant's members, managers, limited partners, shareholders, directors, officers and principals, direct and indirect, for any claims arising out of the Lease.

**8.07** **Counterclaims**. If Landlord commences any summary proceeding or action for nonpayment of Rent or to recover possession of the Premises, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding or action, unless Tenant's failure to interpose such counterclaim in such proceeding or action would result in the waiver of Tenant's right to bring such claim in a separate proceeding under applicable law.

**8.08** **Survival**. All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease for a period of 3 years, except as expressly provided in this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to Recurring Additional Charges and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**8.09** **Certain Remedies: Arbitration**. (a) If Tenant requests Landlord's consent and Landlord fails or refuses to give such consent, except where Landlord acted in bad faith and in an arbitrary and capricious manner in failing or refusing to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction or arbitration in accordance with the provisions of Section 8.09(b), and that such remedy shall be available only in those cases where this Lease provides that Landlord shall not unreasonably withhold its consent.

(b) (i) No dispute relating to this Lease or the relationship of Landlord and Tenant under this Lease shall be resolved by arbitration unless this Lease expressly provides for such dispute to be resolved by arbitration. Either party shall have the right to submit a dispute relating to (x) the reasonableness of the grant or denial of a consent or other determination by the other party when, pursuant to the provisions of this Lease, such other party's consent was not to be unreasonably withheld or (y) any other matter for which arbitration is expressly provided as a means of dispute resolution pursuant to the terms of this Lease (except for matters for which a different arbitration procedure is expressly provided), to final and binding arbitration in New York, New York administered by JAMS in accordance with JAMS Streamlined Arbitration Rules and Procedures in effect at that time (or, if JAMS is no longer in existence, then administered by National Arbitration and Mediation (" NAM "), in accordance with NAM's Comprehensive Dispute Resolution Rules and Procedures; and if NAM is no longer in existence, then administered by the American Arbitration Association under the Expedited Procedures of its Commercial Arbitration Rules in effect at that time; and if none of the preceding remains in existence, by the expedited arbitration procedures of any succeeding or substantially similar dispute resolution organization). A single arbitrator will be selected pursuant to such rules and procedures (the " JAMS Arbitrator "). The parties agree that: (1) the unsuccessful party in such arbitration will pay to the successful party all reasonable attorneys' fees and disbursements incurred by the successful party in connection with such arbitration, and will pay any fees and disbursements due to JAMS (or the organization administering the arbitration) and the JAMS Arbitrator and, to the extent the "successful" party cannot be clearly identified, each party will bear its own costs and expenses and the parties will pay their equal share of any fees and disbursements due to JAMS (or the organization administering the arbitration) and the JAMS Arbitrator; (2) arbitration pursuant to this Section 8.09(b)(i) is intended to be the sole and exclusive method of arbitration to be utilized by the parties and the sole and exclusive dispute resolution method to be utilized by the parties concerning any dispute described in clauses (x) or (y) of this Section 8.09(b); (3) judgment may be had on the decision and award of the arbitrator so rendered in any court of competent jurisdiction (each party hereby consenting to the entry of such judgment in any such court); (4) the JAMS Arbitrator shall have no right to award damages (though the foregoing shall not preclude the JAMS Arbitrator from issuing a determination that results in the payment or credit from one party to the other if such payment or credit is the subject matter of such arbitration); and (5) any decision or award rendered in such arbitration, whether or not such decision or award has been entered for judgment, shall be final and binding upon Landlord and Tenant and shall constitute an "award" by the JAMS Arbitrator within the meaning of the applicable arbitration rules and Laws. The JAMS Arbitrator will be bound by the provisions of this Lease and will not have the power to add to, subtract from or otherwise modify such provisions, and will have the authority to, and may, order specific performance to remedy any breach of the terms of this Lease. The JAMS Arbitrator will consider only the specific issues submitted to him/her for resolution, and will be directed to make a determination as to the "successful" party or a specific determination that there is no prevailing party. If any party fails to appear at a duly scheduled and noticed hearing, the JAMS Arbitrator is hereby expressly authorized to enter judgment for the appearing party. The JAMS Arbitrator shall be directed by both parties to issue a determination that provides an explanation of his/her decision with reasonable specificity. Landlord and Tenant shall each have the right to appear and be represented by counsel before said JAMS Arbitrator and to submit such data and memoranda in support of their respective positions in the matter in dispute as may be reasonably necessary or appropriate under the circumstances. Neither party shall have ex parte communications with any arbitrator selected under this Section 8.09(b) following his or her selection and pending completion of the arbitration hereunder.

(ii) Any JAMS Arbitrator acting under this Section 8.09 in connection with any matter shall (1) be experienced in the field to which the dispute relates, (2) have been actively engaged in such field for a period of at least 10 years before the date of his or her appointment as a JAMS Arbitrator hereunder, (3) be sworn fairly and impartially to perform his or her respective duties as a JAMS Arbitrator hereunder, (4) not be an employee or past employee of Landlord or Tenant or of any other person, partnership, corporation or other form of business or legal association or entity that controls, is controlled by or is under common control with Landlord or Tenant and (5) never have represented or been retained for any reason whatsoever by Landlord or Tenant or any other person, partnership, corporation or other form of business or legal association or entity that controls, is controlled by or is under common control with Landlord or Tenant.

(iii) Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. For such period, if any, as this agreement to arbitrate is not legally binding or the arbitrator's award is not legally enforceable, the provisions requiring arbitration shall be deemed deleted and matters to be determined by arbitration shall be subject to litigation.

(iv) The provisions of this Section 8.09(b) shall survive the expiration or sooner termination of this Lease.

**8.10 No Offer; Counterparts**. The submission by Landlord of this Lease in draft form shall be solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party unless and until both Landlord and Tenant shall have executed a lease and duplicate originals thereof shall have been delivered to the respective parties. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, even where such executed counterpart is delivered via facsimile or Portable Document Format, but all of which together shall constitute one and the same instrument.

**8.11 Captions; Construction**. The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

**8.12 Amendments**. This Lease may not be altered, changed or amended, except by an instrument in writing signed by the party to be charged.

**8.13 Broker**. Each party represents to the other that such party has dealt with no broker other than CBRE, Inc. (representing Landlord) and Newmark & Company Real Estate, Inc., d/b/a Newmark Grubb Knight Frank (representing Tenant) (collectively, the "Broker") in connection with this Lease or, with respect to Tenant only, the Project, and each party shall indemnify and hold the other harmless from and against all loss, cost, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) arising out of any claim for a commission or other compensation by any broker other than Broker who alleges that it has dealt with the indemnifying party in connection with this Lease or the Project. Landlord shall enter into separate agreements with Broker which provide that, if this Lease is executed and delivered by both Landlord and Tenant, Landlord shall pay to Broker any commission that Broker may be entitled to in connection with this Lease, subject to, and in accordance with, the terms and conditions of such agreement.

**8.14** Merger. Tenant acknowledges that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease. This Lease embodies the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, understanding and statements, oral or written, with respect thereto are merged in this Lease.

**8.15** Successors. This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent that an assignment may be approved by Landlord or is otherwise expressly permitted under the terms of this Lease, Tenant's assigns.

**8.16** Applicable Law. This Lease shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any principles of conflicts of laws.

**8.17** No Development Rights. Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Project or any portion thereof, and consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver, at no out-of-pocket cost to Tenant, any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this Section 8.17 shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such term is defined in Section 12-10 Zoning Lot of the Zoning Resolution of the City of New York) in the Project.

**8.18** Condominium. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to any condominium declaration and any other documents (collectively, the "Declaration") which are or shall be recorded in order to convert the Land and the improvements erected thereon to a condominium form of ownership in accordance with the provisions of Article 9-B of the Real Property Law, or any successor thereto, provided the Declaration does not include any terms which increase Tenant's monetary or non-monetary obligations (other than to a de minimis extent) or decrease Tenant's rights (other than to a de minimis extent) or materially interfere with Tenant's use of the Premises for executive, administrative and general office purposes. If any such Declaration is to be recorded, Tenant, upon the request of Landlord, shall enter into an amendment of this Lease (at no out-of-pocket costs to Tenant other than any legal fees incurred by Tenant in connection with same) reasonably acceptable to Tenant confirming such subordination and modifying the Lease in such respects as shall be necessary to conform to such condominiumization, including, without limitation, appropriate adjustments to Tenant's Share and appropriate reductions in the Base Operating Amount, the Base PILOT Amount and the Base Impositions Amount; provided, that, Landlord provides to Tenant a subordination, non-disturbance and attornment agreement duly executed by the board of such condominium in a form reasonably acceptable to Tenant.

**8.19 Embargoed Person.** Tenant represents that as of the date of this Lease, and Tenant covenants that throughout the Effective Period: (a) Tenant is not, and shall not be, an Embargoed Person, (b) none of the funds or other assets of Tenant are or shall constitute property of, or are or shall be beneficially owned, directly or indirectly, by any Embargoed Person; (c) no Embargoed Person shall have any interest of any nature whatsoever in Tenant, with the result that the investment in Tenant (whether directly or indirectly) is or would be blocked or prohibited by law or that this Lease and performance of the obligations hereunder are or would be blocked or in violation of law and (d) none of the funds of Tenant are, or shall be derived from, any activity with the result that the investment in Tenant (whether directly or indirectly) is or would be blocked or in violation of law. “Embargoed Person” means a person, entity or government (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the United States Treasury Department Office of Foreign Assets Control and/or any similar list maintained pursuant to any authorizing statute, executive order or regulation and/or (ii) subject to trade restrictions under United States law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such laws, with the result that the investment in Tenant (whether directly or indirectly), is or would be prohibited by law or this Lease is or would be in violation of law and/or (iii) subject to blocking, sanction or reporting under the USA Patriot Act, as amended; Executive Order 13224, as amended; Title 31, Parts 595, 596 and 597 of the U.S. Code of Federal Regulations, as they exist from time to time; and any other law or Executive Order or regulation through which the U.S. Department of the Treasury has or may come to have sanction authority. If any representation made by Tenant pursuant to this Section 8.19 shall become untrue Tenant shall within 10 days give written notice thereof to Landlord, which notice shall set forth in reasonable detail the reason(s) why such representation has become untrue and shall be accompanied by any relevant notices from, or correspondence with, the applicable governmental agency or agencies.

**8.20 Dining Facility; Wet Installations.** (a) Tenant shall be permitted to use a portion of the Premises for the operation of a Dining Facility provided (i) Tenant obtains (at its cost and expense) any and all required permits, licenses and certificates therefor (including, without limitation, any necessary amendment to the certificate of occupancy for the Building which shall be subject to the provisions of Section 1.04(c)), (ii) Tenant shall perform and pay for any necessary extermination, ventilation and cleaning (in excess of normal office ventilation and cleaning) necessitated by the use of such space as a Dining Facility (it being understood that Landlord's provision of cleaning services shall not be extended beyond that provided for herein by reason of Landlord's approval of the use of such space as a Dining Facility), (iii) Tenant shall cause the Dining Facility to be properly ventilated so that no odor will emanate from the Premises to other portions of the Building and so as to impose no additional loads and have no other adverse effect on the Building HVAC system (including, without limitation, by replacing and/or upgrading filters) and (iv) Tenant shall otherwise maintain and operate each Dining Facility consistent with the standards of a First Class Office Building.

(b) In connection with Tenant's use of portion(s) of the Premises for the operation of a Dining Facility, the parties agree as follows:

(i) Tenant acknowledges that if any smoke or odors are released by Tenant from the Premises, Tenant, at its expense, upon and subject to all of the terms of this Lease, upon Landlord's request, shall perform any work or Alteration reasonably requested by Landlord to remedy such problem.

(ii) Tenant, at its expense, upon and subject to all of the terms of this Lease shall keep its equipment and appliances reasonably clean at all times.

(iii) Tenant, at its expense upon and subject to all of the terms of this Lease, shall diligently keep the Premises at all times free and clear of rats, mice, other rodents, pests, insects and other vermin. In furtherance thereof, Tenant shall employ an exterminator reasonably approved by Landlord to regularly exterminate such rats, mice, other rodents, pests, insects and other vermin, which exterminator shall utilize a method commonly used in First Class Office Buildings for the prevention of any infestation by, and extermination of, said animals and insects and Tenant shall take whatever precautions Landlord deems reasonably necessary to prevent such rats, mice, other rodents, pests, insects and other vermin from existing in the Premises or permeating into other parts of the Building. Any pest management conducted at the Premises shall emphasize non-chemical methods for pest control and comply with Landlord's reasonable integrated pest management program, which program shall be generally applicable to all office tenants of the Building.

(iv) Tenant, at its expense, upon and subject to all of the terms of this Lease, shall arrange for the removal of Tenant's refuse and rubbish from each Dining Facility at least once each day and in compliance with all Rules and Regulations and shall retain Landlord's contractor(s) to perform the same at Tenant's expense. Landlord shall not be required to furnish any services or equipment for the removal of such refuse and rubbish except (i) Landlord shall provide adequate space for the staging of recycling containers in freight areas and (ii) as may otherwise be expressly provided in this Lease. Tenant further agrees not to permit any refuse or rubbish to be collected or disposed of from a Dining Facility during Business Hours. Tenant shall store all food-related and beverage-related garbage in closed refrigerated units within the Premises until collection. Tenant covenants that no supplies or deliveries, nor any of Tenant's refuse or rubbish, shall be kept or permitted to be kept in any area outside of the Premises except as permitted by the applicable Rules and Regulations.

(v) Landlord, at Tenant's reasonable expense, may install submeters to measure Tenant's consumption of water in connection with the use of any Dining Facilities, in which event Tenant shall reimburse Landlord for the quantities of water shown on such meters, within 30 days after demand, at Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto based on the actual costs to Landlord to provide such water and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such water.

(vi) Subject to the applicable provisions of this Lease and Landlord's review and approval of Tenant's plans therefor, Tenant shall have the right, as part of Tenant's Initial Work or as a subsequent Alteration, at Tenant's sole cost and expense, to install an electric water heater, in a location in the Premises to be designated by Landlord, to serve any Dining Facility in the Premises.

(vii) If requested by Landlord in connection with any cafeteria or similar dining facility installed by Tenant in the Premises, Tenant, at its expense, upon and subject to all of the terms of this Lease (including, without limitation, Section 4.02), shall install, maintain and replace as necessary a dehydration grinder capable of achieving at least a 75% reduction in organic waste volume and shall run all organic waste generated by or in connection with any such Dining Facility through such dehydration grinder prior to disposing of such waste in accordance with the provisions of this Section 8.20.

**8.21 Press Releases.** Without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), neither party nor such party's affiliates or their officers, shareholders, partners, directors, employees or representatives shall make or provide any public statement, press release or other public disclosure concerning the transactions contemplated by, and the terms of, this Lease (including, without limitation, by means of statements, press releases or disclosures displayed or accessible electronically, on the internet and/or on social media, such as, by way of example only, Facebook and Twitter), except (i) for any such public statements or disclosures which, in the opinion of such party's counsel, are legally required (in which case the content of such statements or disclosures shall be limited to what is legally required) or (ii) to the extent required by securities laws or compliance provisions of other Laws or any securities, bond or commodities exchange. In the event that a public announcement or disclosure is permitted pursuant to clauses (i) or (ii) of the preceding sentence, prior to making such disclosure, the disclosing party shall notify the other party of such required public disclosure and use reasonable efforts to coordinate with the other party with respect to the nature and content of such disclosure.

**8.22 Tenant Creditworthiness.** Tenant shall, from time to time, upon request by Landlord, a Superior Mortgagee or Superior Lessee or a prospective Superior Mortgagee or Superior Lessee (any such party a "Requesting Party"), cooperate with such Requesting Party in order to establish Tenant's creditworthiness as required by such Requesting Party (or, in the case of Landlord, as required by Landlord or any current or prospective Superior Mortgagee or Superior Lessee) in connection with a prospective modification of, or new, superior lease, a prospective refinancing or modification of, or new mortgage, or a prospective sale, assignment or financing or refinancing of Landlord's interest in this Lease, the Project or any interest in Landlord or any of Landlord's direct or indirect owners, or for any other reasonable purpose. In connection with such cooperation, Tenant shall furnish to the Requesting Party, within 10 Business Days after request by such Requesting Party, all financial information regarding Tenant which is reasonably necessary for such Requesting Party to establish Tenant's creditworthiness, provided, however that Tenant may withhold any information which Tenant is not permitted to disclose under securities laws applicable to public companies. As a condition to Tenant's obligation to provide such financial information to any Requesting Party other than Landlord, prior to Tenant's delivery of such financial information, the Requesting Party (if such party is not Landlord) shall execute and deliver a confidentiality agreement with respect to such financial information substantially in the form attached hereto as Exhibit N, subject to reasonable negotiation at the request of the Requesting Party.

**8.23**      **Recording**. Landlord and Tenant agree not to place this Lease or any memorandum of this Lease of record.

**8.24**      **REIT/UBTI Compliance**. All Rent and all sums, charges, or amounts of whatever nature under this Lease payable to Landlord shall qualify as “rents from real property” under both the Internal Revenue Code § 512(b)(3) and § 856(d) and all related statutes, regulations, revenue rulings, interpretations, and other official pronouncements, all as in effect from time to time. If the Rent or any other sum, charge, or amount of whatever nature to be paid by Tenant to Landlord under this Lease does not so qualify, then Landlord may reasonably adjust the Rent to achieve such qualification; provided that such adjustments, in the aggregate, produce the economic equivalent to the Rent that would have been payable by Tenant to Landlord without giving effect to any such adjustments. Tenant, at no cost to Tenant, shall execute such documents as Landlord reasonably requires to make such adjustments. If the charge or cost for any service required or permitted to be performed by Landlord pursuant to this Lease may be treated as “impermissible tenant service” income under the Laws governing a real estate investment trust (“REIT”), or as unrelated business taxable income, then, in lieu of Landlord performing such service, such service may be performed by a taxable REIT subsidiary that is affiliated with either Landlord or Landlord’s property manager, an independent contractor of Landlord or Landlord’s property manager who shall perform its obligations subject to the same requirements as are applicable to Landlord under this Lease (the “Service Provider”). If Tenant is subject to a charge under this Lease for any such service, then, at Landlord’s direction, Tenant shall pay such charge either to Landlord for further payment to the Service Provider or directly to the Service Provider, and, in either case, (a) Landlord will credit such payment against Additional Charges due from Tenant under this Lease for such service and (b) such payment to the Service Provider will not relieve Landlord from any obligation under this Lease concerning the provisions of such service.

**8.25**      **Time of the Essence**. Time shall be of the essence with respect to all deadlines and time periods set forth in this Lease for the exercise of rights under this Lease.

## **ARTICLE 9**

### **Signage**

**9.01**      **Premises Signage**. Subject to the provisions of Article 4, Tenant shall have the right, at Tenant’s sole cost and expense, to display Tenant identification signage in the elevator lobby on any full floor of the Premises which Tenant leases; provided, that any such signage has been approved by Landlord (such approval not to be unreasonably withheld, conditioned, or delayed) and is in compliance with applicable Laws. Subject to the provisions of Article 4, Tenant shall have the right, at Tenant’s sole cost and expense, to display Tenant identification signage on any door to the Premises on any partial floor of the Premises which Tenant leases; provided, that any such signage is consistent with Landlord’s signage criteria, has been approved by Landlord (such approval not to be unreasonably withheld, conditioned, or delayed) and is in compliance with applicable Laws.

**9.02 Signage Removal.** Tenant covenants and agrees that on the expiration or sooner termination of the Term, Tenant, at its sole cost and expense, shall promptly remove any sign or signs installed or displayed by or on behalf of Tenant pursuant to this Article 9 or otherwise, repair in good and workmanlike manner all damage caused by such removal and restore the affected portion of the Building to the condition in which it existed prior to the installation of any such sign or signs.

**9.03 Building Directory.** If Landlord installs an electronic building directory in the Building, Tenant and Tenant's Affiliates and any permitted subtenants of Tenant shall be entitled, without charge (except to the extent Landlord incurs any costs in connection with such directory which are includable in Operating Expenses pursuant to the provisions of Section 2.07), to be listed on such directory.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first written above.

Landlord:

LEGACY YARDS TENANT LP

By: Legacy Yards Tenants GP LLC, its general partner

By: /s/ L. Jay Cross

Name: L. Jay Cross

Title: President

Tenant:

INTERCEPT PHARMACEUTICALS, INC.

By: /s/ Mark Pruzanski

Name: Mark Pruzanski

Title: CEO

Tenant's Federal Tax I.D. No.:

22-3868459

**EXHIBIT A**

**DESCRIPTION OF LAND**

**EXHIBIT B**

**FLOOR PLANS**

These floor plans are annexed to and made a part of this Lease solely to indicate the Premises by outlining and diagonal marking. All areas, conditions, dimensions and locations are approximate.

EXHIBIT C

RULES AND REGULATIONS

**EXHIBIT D**

**STANDARD CLEANING SPECIFICATIONS**

**EXHIBIT E**

**DELIVERY CONDITION**

**EXHIBIT F**

**HVAC SPECIFICATIONS**

**EXHIBIT G**

**ELEVATOR SPECIFICATIONS**

**EXHIBIT H**

**CHARGES FOR LANDLORD SERVICES AND PERSONNEL**

**EXHIBIT I-1**

**TENANT DESIGN STANDARDS**

**EXHIBIT I-2**

**CONSTRUCTION RULES**

**EXHIBIT J**

**INSURANCE MINIMUM COVERAGE AND LIMITS**

**A. Insurance to be Maintained by Tenant Pursuant to Section 4.02(f) and Section 7.02 of the Lease**

(i) **Workers Compensation Insurance:** providing Statutory Benefits, as required by applicable Law, and Employer's Liability Insurance.

Coverage A	Statutory
Coverage B	Employers Liability
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 each Employee

(ii) **Commercial General Liability :** including Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury Liability, Host Liquor Legal Liability, written on an occurrence form, with a combined single limit of no less than \$1,000,000 each occurrence, and \$2,000,000 general aggregate per policy period and Fire Damage Liability limit of not less than \$100,000 any one fire, or such higher limits as the Landlord may from time to time request. The policy will be on the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG 0001, or its equivalent. Policy shall include coverage for all "pollution" hazards usual to mold.

(iii) **Products and Completed Operations Liability :** written on a claims made form, \$1,000,000 each occurrence, and \$1,000,000 aggregate, or such higher limits as the Landlord may from time to time request

(iv) **Commercial Automobile Liability:** including owned, hired, and non-owned coverage with a limit of liability of no less than \$1,000,000 per occurrence. Such policy shall include coverage for contractual liability. This coverage must include all automotive and truck equipment used in the performance of the work under this Lease, and must include loading and unloading of same.

(v) **Umbrella Liability:** shall be written on no less than a follow form basis (no more restrictive than the underlying Employer's Liability, Commercial General Liability and Commercial Automobile Liability) with a Limit of Liability of \$10,000,000 per occurrence and in the aggregate, or such higher limits as Landlord may from time to time request.

(vi) **Property Insurance:** Property insurance shall be purchased, on an "All Risk" form of policy (including coverage for acts of terrorism), for all merchandise, equipment and other Tenant's Property from time to time located in, on or about the Building and all Fixtures installed by or on behalf of Tenant, under a policy or policies in the amount of 100% of replacement cost without deduction for depreciation of such merchandise, equipment, other Tenant's Property and Fixtures. Such policy or policies shall name Landlord and any Superior Mortgagees and Superior Lessors as loss payee as their interests may appear. Such property policy or policies shall include coverage for earthquake/earth movement, demolition and increased cost of construction due to a change in law or ordinance, sewer back-up, extra expense and expediting expense.

**(vii) Business Income Insurance:** Business income insurance shall be purchased, (A) covering all risks required to be covered by the insurance provided for Section (vi) above; (B) in the aggregate amount, for a period of 12 months following the insured against peril, of one hundred percent (100%) of all fixed rent and additional rent to be paid by Tenant hereunder; and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to Tenant's Property and Fixtures has been repaired, the continued loss of income will be insured for 360 days or until such income returns to the same level it was at prior to the loss, notwithstanding that the policy may expire prior to the end of such period.

**(viii) Boiler and Machinery:** (for Boiler and Machinery used exclusively by Tenant) At all times Tenant shall maintain boiler and machinery insurance on a blanket basis covering the sudden breakdown of all equipment, machinery and apparatus consisting of, but not limited to boilers, heating apparatus fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment in an amount not less than the full replacement or functional cost thereof. Such coverage shall include business income insurance (A) covering all risks required to be covered by the insurance provided for in Sections (v), (vi) and (vii) above; (B) in the aggregate amount, for a period of 12 months following the insured against peril, of one hundred percent (100%) of all fixed rent and additional rent to be paid by Tenant hereunder; and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to Tenant's Property and Fixtures has been repaired, the continued loss of income will be insured for 360 days or until such income returns to the same level it was at prior to the loss, notwithstanding that the policy may expire prior to the end of such period.

**B. Insurance to be Maintained by Tenant's Contractors Pursuant to Section 4.02(f) of the Lease**

Any contractor, subcontractor (of any tier), design consultant, sub-consultant (of any tier), and any other party performing work in the Building on behalf of Tenant is a "Tenant's Contractor" for purposes of this Lease.

**(i) Insurance to be Maintained by Tenant's Contractors**

**(a) Workers Compensation Insurance:** providing Statutory Benefits, as required by applicable state law and Employer's Liability Insurance.

Coverage A	Statutory
Coverage B	Employers Liability
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 each Employee

**(b) Commercial General Liability :** including Contractual Liability, Products and Completed Operations Liability (which may be a separate policy), Broad Form Property Damage, Personal and Advertising Injury Liability, Host Liquor Legal Liability, written on an occurrence form, with a Combined Single Limit of no less than \$ 1,000,000 each occurrence, and \$2,000,000 general aggregate per project, per location and \$2,000,000 Products Completed Operations aggregate, Fire Damage Liability limit of not less than \$100,000 any one fire, or such higher limits as the Landlord may from time to time request. The policy will be on the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG 0001, or its equivalent. Policy shall include coverage for all “pollution” hazards usual to mold.

**(c) Commercial Automobile Liability:** including owned, hired, and non-owned coverage with a Limit of Liability of no less than \$1,000,000 per occurrence. Such policy shall include coverage for contractual liability. This coverage must include all automotive and truck equipment used in the performance of the work under this Lease, and must include loading and unloading of same.

**(d) Umbrella Liability:** shall be written on no less than a follow form basis (no more restrictive than the underlying Employer’s Liability, Commercial General Liability and Commercial Automobile Liability) with a Limit of Liability of \$5,000,000 per occurrence and in the aggregate (or \$25,000,000 with respect to any Tenant’s Contractor performing structural work in the Building), or such higher limits as Landlord may from time to time request.

**(e) Builders Risk:** Builders Risk shall be purchased (if not covered under Tenant’s property policies) on an All Risk Policy including “Soft Costs” form for all work performed, in amounts not less than 100% of the full completed value of the work including materials and equipment stored on or about the job site, while in transit to the job site and while stored away from the job site. Policy shall include coverage for increased cost to repair or replace due to a change in law or ordinance, earthquake, and flood.

**(ii) Insurance to be Maintained by any Tenant’s Contractor which is an Architect or Design Professional**

**(a) Professional Liability:** Shall be purchased by all Architects and Engineers for Professional Liability Errors and Omissions in an amount not less than \$2,000,000 each claim and annual aggregate for the lead architect or consultant and \$1,000,000 each claim and annual aggregate for all sub-consultants, per project with a maximum deductible of \$10,000, including punitive damage coverage and contractual liability coverage, without limitations. The policy shall have a retroactive date that precedes the start of the design services. Such Errors & Omission policy shall be maintained in full force and effect for the lesser of 6 years or the statute of limitations from the date the relevant work is completed. Any sub-consultant shall maintain Architects’ Errors and Omissions Professional Liability which is no more restrictive than the prime consultant’s policy.

**C. Requirements Applicable to All Insurance Required Pursuant to this Lease**

**(i) Additional Insureds:** The General Liability and Umbrella Liability policies required hereunder must name Landlord, The Related Companies L.P., Oxford Hudson Yards LLC, any Superior Lessors, any Superior Mortgagees and any of such entities’ subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, and assignees, and such other entities hereafter as may be reasonably requested by Landlord (collectively, the “ Additional Insureds ”), as additional insureds. Coverage afforded to the Additional Insureds shall apply on a primary basis. Tenant’s Contractors shall provide Endorsement form CG 20 10 11/85 (Form B) or its equivalent and must provide coverage within the Products and Completed Operations coverage section.

In the event Tenant and/or any of Tenant's Contractors, maintains limits greater than set forth herein, Landlord and the then Additional Insureds shall be included therein as additional insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

**(ii) Self Insured Retention:** Tenant shall have the right to satisfy its insurance obligations under this Lease by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as: (a) such self-insurance is permitted under all laws applicable to Tenant and/or the Property at the time in question; (b) such self-insurance is in compliance with any customary and commercially reasonable minimum insurance requirements imposed upon Landlord by Landlord's lender(s); (c) Tenant maintains a net worth (as shown by its financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000.00); (d) unless such information is already generally available to the public, Tenant shall, not less than annually, provide Landlord an audited financial statement, prepared by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied, showing the required net worth; and (e) such self-insurance provides for loss reserves that are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any self-insured exposure shall be deemed to be an insured risk under this Lease. The beneficiaries of such insurance shall be afforded no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder (including, without limitation, the protection of a legal defense, by attorneys reasonably acceptable to beneficiaries, and the payment of claims within the same time period that a third party insurance carrier of the quality and caliber otherwise required hereunder would have paid such claims). The waiver of subrogation provided for hereunder shall be applicable to any self-insured exposure. All self insured retentions must be acceptable to and approved in writing by Landlord prior to use and the insurance required under this Lease must be maintained in excess of such self- insurance retention.

Any and all deductibles and/or self insured retentions for the insurance policies described in this Exhibit J shall be assumed by and for the account of Tenant or any Tenant's Contractor, as applicable, at the sole risk and expense of such entity.

**(iii) Terrorism Coverage:** All coverage required herein shall include coverage for certified acts of terrorism.

**EXHIBIT K**

**APPROVED CONTRACTORS**

**EXHIBIT L**

**SECURITY SPECIFICATIONS**

**EXHIBIT M**

**INTENTIONALLY OMITTED**

**EXHIBIT N**

**FORM OF CONFIDENTIALITY AGREEMENT**

**EXHIBIT O**

**FORM OF LETTER OF CREDIT**

**EXHIBIT P**

**LEED-RELATED REQUIREMENTS FOR ALTERATIONS**

**EXHIBIT Q**

**INTENTIONALLY OMITTED**

**EXHIBIT R**

**INTENTIONALLY OMITTED**

**EXHIBIT S**

**FORM OF LANDLORD'S NON-DISTURBANCE AGREEMENT**

**EXHIBIT T**

**INTENTIONALLY OMITTED**

**ONE HUDSON YARDS OWNER LLC,**

**Landlord**

**TO**

**INTERCEPT PHARMACEUTICALS, INC.,**

**Tenant**

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**Lease**

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**Dated as of December 7, 2016**

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**TABLE OF CONTENTS**

		Page
<b>ARTICLE 1 PREMISES; TERM; USE</b>		<b>1</b>
1.01	Demise	1
1.02	Term	2
1.03	Possession Date	2
1.04	Use	5
<b>ARTICLE 2 RENT</b>		<b>8</b>
2.01	Rent	8
2.02	Fixed Rent	8
2.03	Additional Charges	8
2.04	PILOT Payments	8
2.05	Impositions	13
2.06	Tax Payments	15
2.07	Operating Payments	17
2.08	PILOT, Impositions, Tax and Operating Provisions	25
2.09	Electric Charges	26
2.10	Manner of Payment	27
2.11	Security	28
<b>ARTICLE 3 LANDLORD COVENANTS</b>		<b>29</b>
3.01	Landlord Services	29
3.02	General Service Provisions	38
3.03	Landlord's Contribution	39
3.04	Governmental Incentives	42
<b>ARTICLE 4 LEASEHOLD IMPROVEMENTS; TENANT COVENANTS</b>		<b>43</b>
4.01	Initial Improvements	43
4.02	Alterations	53
4.03	Landlord's and Tenant's Property	57
4.04	Access and Changes to Building	58
4.05	Repairs	60
4.06	Compliance with Laws; Hazardous Materials	61
4.07	Tenant Advertising	62
4.08	Right to Perform Tenant Covenants	62
4.09	Telecommunications; Shaft Space	63
<b>ARTICLE 5 ASSIGNMENT AND SUBLETTING</b>		<b>64</b>
5.01	Assignment; Etc	64
5.02	Landlord's Right of First Offer	66
5.03	Assignment and Subletting Procedures	69
5.04	General Provisions	70

5.05	Assignment and Sublease Profits	72
5.06	Eligible Subtenant; Non-Disturbance	73
5.07	Disputes	74
<b>ARTICLE 6 SUBORDINATION; DEFAULT; INDEMNITY</b>		<b>74</b>
6.01	Subordination	74
6.02	Estoppel Certificate	76
6.03	Default	76
6.04	Re-entry by Landlord	77
6.05	Damages	77
6.06	Other Remedies	78
6.07	Right to Injunction	78
6.08	Certain Waivers	78
6.09	No Waiver	79
6.10	Holding Over	79
6.11	Attorneys' Fees	79
6.12	Nonliability and Indemnification	80
<b>ARTICLE 7 INSURANCE; CASUALTY; CONDEMNATION</b>		<b>81</b>
7.01	Compliance with Insurance Standards	81
7.02	Tenant's Insurance	82
7.03	Subrogation Waiver	82
7.04	Condemnation	83
7.05	Casualty	84
7.06	Landlord's Insurance	86
<b>ARTICLE 8 MISCELLANEOUS PROVISIONS</b>		<b>86</b>
8.01	Notice	86
8.02	Rules and Regulations	88
8.03	Severability	89
8.04	Certain Definitions	89
8.05	Quiet Enjoyment	90
8.06	Limitation of Landlord's and Tenant's Personal Liability	90
8.07	Counterclaims	90
8.08	Survival	90
8.09	Certain Remedies; Arbitration	90
8.10	No Offer; Counterparts	92
8.11	Captions; Construction	92
8.12	Amendments	93
8.13	Broker	93
8.14	Merger	93
8.15	Successors	93
8.16	Applicable Law	93
8.17	No Development Rights	93
8.18	Condominium	94
8.19	Embargoed Person	94
8.20	Dining Facility; Wet Installations	95

8.21	Press Releases	96
8.22	Tenant Creditworthiness	97
8.23	Recording	97
8.24	REIT/UBTI Compliance	97
8.25	Time of the Essence	98
8.26	Car Service Access to Building	98
<b>ARTICLE 9 RENEWAL RIGHT</b>		<b>98</b>
9.01	Renewal Right	98
9.02	Renewal Rent and Other Terms	99
<b>ARTICLE 10 INTENTIONALLY OMITTED</b>		<b>102</b>
<b>ARTICLE 11 RIGHT OF FIRST OFFER</b>		<b>102</b>
11.01	Offer Space Option	102
<b>ARTICLE 12 SIGNAGE</b>		<b>105</b>
12.01	Premises Signage	105
12.02	Other Tenant Lobby Signage	106
12.03	Signage Removal	106
12.04	Building Directory	106
12.05	Naming	106
<b>ARTICLE 13 TERRACE SPACE</b>		<b>107</b>
13.01	Terrace Space	107
<b>EXHIBITS</b>		
A	Description of Land	
B-1	Floor Plans	
B-2	Approximate Rentable Square Footage of Premises	
C	Rules and Regulations	
D	Standard Cleaning Specifications	
E-1	Delivery Condition	
E-2	Post Delivery Condition	
F	HVAC Specifications	
G	Elevator Specifications	
H	Charges for Landlord Services and Personnel	
I-1	Tenant Design Standards	
I-2	Construction Rules	
J	Insurance Minimum Coverage and Limits	
K	Approved Contractors	
L	Security Specifications	
M-1	Form of Superior Mortgagee SNDA	
M-2	Form of Superior Lessor SNDA	

M-3	Form of PILOT SNDA
N	Form of Confidentiality Agreement
O	Form of Letter of Credit
P	LEED-Related Requirements For Alterations
Q	Intentionally Omitted
R	Intentionally Omitted
S	Location of Capped Valved Outlets
T	List of Base Building Working Drawings
U	Designated Shaft Space
V	Form of Landlord's Non-Disturbance Agreement
W	Existing Superior Rights
X	Rated Partitions Around Building Core
Y	Life Safety System
Z	Hoist Impacted Area
AA	Terrace Space

## INDEX OF DEFINED TERMS

<u>Definition</u>	<u>Where Defined</u>
Acceptance Notice	Section 11.01
Access Date	Section 4.01
Additional Charges	Section 2.03
Additional Tax Amount	Section 2.04
Additional Tax Payment	Section 2.04
Affiliate	Section 5.01
Allocated Generator Capacity	Section 3.01
Alterations	Section 4.02
Anticipated Offer Space Inclusion Date	Section 11.01
Applicable Percentage	Section 6.10
Arbiter	Section 2.07
Assignment Consideration	Section 5.05
ATMs	Section 1.04
Available	Section 11.01
Base Building Work	Section 4.01
Base Building Working Drawings	Section 4.01
Base Impositions Amount	Section 2.05
Base Operating Amount	Section 2.07
Base Operating Year	Section 2.07
Base PILOT Amount	Section 2.04
Base PILOT Year	Section 2.04
Basic Electric Charge	Section 2.04
Broker	Section 8.13
Building	Recitals
Business Days	Section 3.02
Business Hours	Section 3.02
Casualty	Section 7.05
Commencement Date	Section 1.02
Control	Section 5.01
CPI	Section 8.04
Curing Party	Section 4.08
Customary Ancillary Uses	Section 1.04
Declaration	Section 8.18
Decorative Alterations	Section 4.02
Delay Cost Cap	Section 1.03
Delivery Condition	Section 4.01
Desk Space User	Section 5.01
Dining Facility	Section 1.04
Effective Date	Introduction
Effective Period	Section 2.04
Electricity Additional Rent	Section 2.09
Elevators	Section 3.01

Eligible Sublease	Section 5.06
Eligible Subtenant	Section 5.06
Embargoed Person	Section 8.19
Excluded Sublease	Section 5.02
Existing Superior Rights	Section 11.01
Expiration Date	Section 1.02
Fair Market Rent	Section 9.02
Fair Offer Rent	Section 11.01
Fifth Reduction Date	Section 2.11
First Class Office Building	Section 1.04
First Five Year Renewal Term	Section 9.01
First Reduction Date	Section 2.11
Fixed Rent	Section 2.02
Fixtures	Section 4.03
Fourth Reduction Date	Section 2.11
Future Reduction Amount	Section 2.11
GAAP	Section 2.07
Hazardous Materials	Section 4.06
Hoist Impacted Area	Section 4.01
Hoist Impacted Area Work	Section 4.01
Holidays	Section 3.02
IDA	Section 2.04
Impositions	Section 2.05
Impositions Payment	Section 2.05
Initial Lease-Up Restriction	Section 5.01
Initial Meeting	Section 9.02
Initial Reduction Amount	Section 2.11
Intercept Tenant	Section 4.02
Interest Rate	Section 4.08
Internal Stairs	Section 3.01
JAMS Arbitrator	Section 8.09
Land	Recitals
Landlord	Introduction
Landlord Delay	Section 4.01
Landlord Delay Notice	Section 4.01
Landlord Indemnified Party	Section 6.12
Landlord Services	Section 3.01
Landlord's Determination	Section 9.02
Landlord's Non-Disturbance Agreement	Section 5.06
Landlord's Post Turnover Work	Section 4.01
Landlord's Rate	Section 2.09
Landlord's Statement	Section 2.07
Landlord's Work	Section 4.01
Landlord's Turnover Work	Section 4.01
Latent Defects	Section 4.01
Laws	Section 4.06

LC Date	Section 2.11
Letter of Credit	Section 2.11
Lobby	Section 12.02
Measurement Standard	Section 1.01
Messenger Center	Section 3.01
Messenger Center Services	Section 3.01
Minimum Retainage	Section 3.03
NAM	Section 8.09
Net Effective Rental	Section 5.02
Net Present Rent Value	Section 5.02
New Tenant	Section 6.10
Non-Material Alteration	Section 4.02
Notice	Section 8.01
Offer Notice	Section 11.01
Offer Period	Section 11.01
Offer Space	Section 11.01
Offer Space Inclusion Date	Section 11.01
Offer Space Option	Section 11.01
Operating Expenses	Section 2.07
Operating Payment	Section 2.07
Operating Year	Section 2.07
Other Sublease Considerations	Section 5.05
Outside Possession Date	Section 1.03
Outside Requisition Date	Section 3.03
Outside TCO Date	Section 1.03
Permitted Users	Section 1.04
PILOT	Section 2.04
PILOT Agreement	Section 2.04
PILOT Amount	Section 2.04
PILOT Cessation Date	Section 2.04
PILOT Payment	Section 2.04
Possession Date	Section 1.03
Post Delivery Condition	Section 4.01
Pre-Construction Activities	Section 4.01
Premises	Section 1.01
Project	Recitals
Punch List Items	Section 4.01
Records	Section 2.07
Recurring Additional Charges	Section 2.03
Reduction Amount	Section 2.11
Reduction Date	Section 2.11
REIT	Section 8.24
Renewal Option	Section 9.01
Renewal Premises	Section 9.01
Renewal Term	Section 9.01
Rent	Section 2.01

Rent Commencement Date	Section 2.02
Requesting Party	Section 8.22
Required Letter of Credit Amount	Section 2.11
Reserved Tonnage	Section 3.01
Restoration Work	Section 4.03
Rules and Regulations	Section 8.02
Second Outside Possession Date	Section 1.03
Second Outside Tenant's Occupancy Date	Section 1.03
Second Reduction Date	Section 2.11
Second Renewal Notice	Section 9.01
Second Renewal Option	Section 9.01
Second Renewal Term	Section 9.01
SNDA	Section 6.01
Specialty Installations	Section 4.03
Standby Power Election Date	Section 3.01
Standby Power Election Notice	Section 3.01
Standby Power System	Section 3.01
Subject to CPI Increases	Section 8.04
Substantial Completion; Substantially Complete	Section 4.01
Substantial Completion Notice	Section 4.01
Substantial Portion	Section 3.02
Successor Landlord	Section 6.01
Superior Lease	Section 6.01
Superior Lessor	Section 6.01
Superior Mortgage	Section 6.01
Superior Mortgagee	Section 6.01
Tax Payment	Section 2.06
Tax Year	Section 2.04
Taxes	Section 2.06
TCO	Section 1.04
Temporary Hoist Enclosure	Section 4.01
Ten Year Renewal Term	Section 9.01
Tenant	Introduction
Tenant Delay	Section 4.01
Tenant Indemnified Party	Section 6.12
Tenant Inspection Notice	Section 4.01
Tenant Requisition	Section 3.03
Tenant's Basic Cost	Section 5.05
Tenant's Contractors	Section 4.01
Tenant's Determination	Section 9.02
Tenant's Occupancy Date	Section 1.03
Tenant's Occupancy Notice	Section 1.03
Tenant's Offer Notice	Section 5.02
Tenant's Property	Section 4.03
Tenant's Share	Section 2.04
Tenant's Statement	Section 2.07

Tenant's Initial Work	Section 3.03
Terrace Space	Section 13.01
Terrace Space Floor	Section 13.01
Term	Section 1.02
Third Outside Tenant's Occupancy Date	Section 1.03
Third Reduction Date	Section 2.11
Transfer Notice	Section 5.03
Unavoidable Delay	Section 8.04
Untenantable	Section 3.02
Violations	Section 4.01
Walk-Through Date	Section 4.01
Warranty Period	Section 4.01
Work Reimbursement Period	Section 3.03
Work Allowance	Section 3.03

**LEASE**, dated as of December 7, 2016 (the “**Effective Date**”), between **ONE HUDSON YARDS OWNER LLC** (“**Landlord**”), a Delaware limited liability company whose address is c/o Related Companies, 60 Columbus Circle, New York, New York 10023 and **INTERCEPT PHARMACEUTICALS, INC.** (“**Tenant**”), a Delaware corporation whose address is 450 W 15th Street, Suite 505, New York, New York 10011.

**WITNESSETH:**

WHEREAS, Landlord is willing to lease to Tenant and Tenant is willing to hire from Landlord, on the terms hereinafter set forth, certain space in the building known as 55 Hudson Yards and located at 550 West 34<sup>th</sup> Street, New York, New York (the “**Building**”), which is to be constructed on the land described on **Exhibit A** (the “**Land**”, the Land and the Building and all plazas, sidewalks and curbs adjacent thereto are, collectively, the “**Project**”).

NOW, THEREFORE, Landlord and Tenant agree as follows:

**ARTICLE 1**

**Premises; Term; Use**

**1.01 Demise.** (a) Landlord hereby leases to Tenant and Tenant hereby hires from Landlord, subject to the terms and conditions of this Lease, the entire 23rd through 25th floors of the Building (collectively, the “**Premises**”), in each case, substantially as shown hatched and described as the “Marketing Floors” on the plans annexed as **Exhibit B-1**. Landlord and Tenant agree that the Premises leased pursuant to this **Section 1.01(a)** shall contain, in the aggregate, approximately 85,281 rentable square feet, and that the rentable square footage of each floor of the Premises shall be approximately as set forth on **Exhibit B-2** annexed hereto; provided, that the rentable square footage of each such floor of the Premises shall be measured and finally determined (subject to the provisions of **Section 1.03**) in accordance with the Measurement Standard prior to or promptly after the Possession Date (as hereinafter defined). “**Measurement Standard**” means the Real Estate Board of New York Recommended Method of Floor Measurement for Office Buildings effective January 1, 1987 (as amended in 2003) applicable to measuring usable area, with a 27% loss factor applied to the resulting number of usable square feet. Thus, for example, if a full floor contained 10,000 usable square feet, such full floor would be deemed to contain 13,699 rentable square feet, obtained by dividing 10,000 by .73 (USF/[1-Loss Factor] = RSF). For a partial floor, the number of usable square feet contained within the common areas on such floor would be allocated on a proportional basis among the leasable areas on such floor before applying the loss factor. Subject to the other applicable provisions of this Lease, the leasing of the Premises by Tenant shall be deemed to include the non-exclusive right to use in common with others, for their intended uses, the common facilities in the Project designed and intended for use by tenants or other occupants in the Building in common with Landlord and other tenants of the Building, including, without limitation, elevators, fire stairs, mechanical areas serving the Premises (if any), and telephone and electrical closets and riser shafts serving the Premises (if any), and all walkways, loading docks, plazas, courts, public areas within the property line of the Building, service areas, lobbies, landscaped and garden areas and all other common and service areas and common amenities of the Project.

(b) Notwithstanding the provisions of Section 1.01(a), Landlord shall have the one-time right, exercisable upon written notice given to Tenant on or before January 1, 2017, to redesignate the floors of the Premises; provided, that, in any event, (i) the initial Premises (i.e., the Premises leased to Tenant pursuant to this Section 1.01) shall consist of 3 contiguous full floors, the lowest of which shall be no lower than the 23rd floor of the Building, (ii) all of such 3 contiguous full floors shall be served by the same elevator bank (it being agreed that such elevator bank may be different than the elevator bank serving the Premises initially demised hereunder), (iii) the rentable square footage of each redesignated floor shall not be increased or decreased by more than 5% of the rentable square footage of the originally designated floor hereunder and (iv) none of such redesignated floors shall incorporate mechanical or structural equipment or elements or components, respectively, in areas in which Tenant otherwise had access to and which were not located on the floors originally designated. If Landlord exercises its right pursuant to this Section 1.01(b) to redesignate the floors of the Premises, Tenant shall lease such redesignated floors upon all of the terms and conditions of this Lease, except that references in this Lease to specific floors of the Building shall be appropriately adjusted to account for such change. After the determination of the floors of the initial Premises in accordance with the foregoing provisions of this Section 1.01(b), Landlord and Tenant shall confirm such determination of floors and any other adjustments to references in this Lease to specific floors of the Building (including, without limitation, adjustments to the floors serviced by the Elevators (as hereinafter defined) if the elevator bank serving the redesignated floors is different from the elevator bank serving the Premises initially demised hereunder) by executing an instrument reasonably satisfactory to Landlord and Tenant; provided, that failure by Landlord or Tenant to execute such instrument shall not affect the determination and adjustment of such floors in accordance with this Section 1.01.

**1.02** Term. This Lease shall be effective as of the Effective Date as a binding, enforceable agreement between Landlord and Tenant. The term of this Lease (the "Term") shall commence on the Possession Date (as hereinafter defined; such commencement date shall sometimes be referred to in this Lease as the "Commencement Date") and shall end, unless sooner terminated as herein provided, on the last day of the calendar month in which occurs the 15th anniversary of the day preceding the Rent Commencement Date (as hereinafter defined) (such date, as the same may be extended pursuant to Article 9, is called the "Expiration Date").

**1.03** Possession Date. (a) The "Possession Date" means the earlier of (i) the later of (x) the earliest date upon which Substantial Completion of Landlord's Turnover Work shall have occurred or been deemed to have occurred in accordance with the provisions of Section 4.01(a) of this Lease and (y) January 1, 2018 and (ii) the date Tenant takes possession of the Premises (or any portion thereof) for the performance of Alterations or for any other reason other than pursuant to Section 4.01(b). After the occurrence of the Possession Date, Landlord and Tenant shall promptly confirm the Possession Date, the Rent Commencement Date, the Expiration Date and the rentable square footage of each portion of the Premises by a separate instrument; provided, that the failure to execute and deliver such instrument shall not affect the determination of such dates and rentable square footages in accordance with this Article 1 and Section 4.01(a) of this Lease. Any dispute with respect to the rentable square footage of the Premises shall be resolved by arbitration in accordance with the provisions of Section 8.09. Pending the resolution of any dispute as to the Possession Date, the Rent Commencement Date and/or the rentable square footage of the Premises (or any portion thereof), Tenant shall pay Rent based upon Landlord's determination, without prejudice to Tenant's position or any waiver of its rights under this Lease or at law.

(b) Subject to the provisions of Section 1.03(c) hereinafter following, if for any reason Landlord shall be unable to deliver possession of the Premises to Tenant on any date specified in this Lease for such delivery, Landlord shall have no liability to Tenant therefor and the validity of this Lease shall not be impaired, nor shall the Term be extended, by reason thereof. This Section 1.03 shall be an express provision to the contrary for purposes of Section 223-a of the New York Real Property Law and any other law of like import now or hereafter in effect.

(c) (i) Notwithstanding anything to the contrary contained herein, if the Possession Date has not occurred (or be deemed to have occurred) on or before April 1, 2018 (as such date shall be extended on a day for day basis for each day of Tenant Delay and Unavoidable Delay, the “Outside Possession Date”) and, solely by reason of Landlord’s failure to cause the Possession Date to occur on or before the Outside Possession Date, Tenant shall actually be delayed in completing Tenant’s Initial Work (as hereinafter defined) and occupying all or a portion of the Premises for the conduct of Tenant’s business, Tenant’s sole and exclusive remedy for such delay shall be (1) the Rent Commencement Date shall be extended by one-quarter (1/4) day (in addition to the extension of the Rent Commencement Date which may result by virtue of the Possession Date not having timely occurred) for each day that the Possession Date has not occurred (or be deemed to have occurred) after the Outside Possession Date until the earlier of the date the Possession Date occurs (is deemed to have occurred) and the Second Outside Possession Date and (2) if the Possession Date has not occurred (or be deemed to have occurred) on or before the date that is 90 days after the Outside Possession Date (as such date shall be extended on a day for day basis for each day of Tenant Delay and Unavoidable Delay, the “Second Outside Possession Date”), the Rent Commencement shall thereafter be extended by one-half (1/2) day (in addition to the extension of the Rent Commencement Date which may result by virtue of the Possession Date not having timely occurred) for each day that the Possession Date has not occurred (or be deemed to have occurred) after the Second Outside Possession Date until the date the Possession Date occurs (or is deemed to have occurred).

(ii) If the Possession Date has not occurred (or be deemed to have occurred) on or before the Outside Possession Date and, solely by reason of Landlord’s failure to cause the Possession Date to occur on or before the Outside Possession Date, Tenant shall actually be delayed in completing Tenant’s Initial Work and occupying all or a portion of the Premises for the conduct of Tenant’s business, Landlord shall reimburse (or, at Landlord’s option, Landlord shall credit against the Rent thereafter coming due under this Lease) Tenant for the actual out-of-pocket costs incurred by Tenant as a result of the delay in Tenant being able to move its employees to the Premises but solely to the extent such costs are incurred as a result of Landlord’s failure to cause the Possession Date to occur on or before the Outside Possession Date; provided, that such costs shall not exceed \$125,000.00 in the aggregate (the “Delay Cost Cap”). Landlord shall reimburse such costs (not to exceed the Delay Cost Cap) or, at Landlord’s option, provide a credit against the Rent thereafter coming due under this Lease, within 30 days after Tenant delivers reasonable supporting documentation to Landlord evidencing any such costs.

(iii) If Landlord has not obtained the TCO (as hereinafter defined) on or before the date that Tenant has substantially completed Tenant's Initial Work in substantial accordance with the plans approved by Landlord with respect thereto and is ready, willing and able to occupy the Premises for the ordinary conduct of business ("Tenant's Occupancy Date") and, solely by reason of Landlord's failure to obtain the TCO on or before Tenant's Occupancy Date, Tenant shall actually be delayed in completing Tenant's Initial Work and occupying all or a portion of the Premises for the ordinary conduct of Tenant's business, Tenant's sole and exclusive remedy therefor shall be that (1) the Rent Commencement Date shall be extended by 1 day for each day that Landlord has not obtained the TCO after Tenant's Occupancy Date until the earlier of the date Landlord obtains the TCO, or would have obtained the TCO but for any Tenant Delay or Unavoidable Delay, and the Second Outside Tenant's Occupancy Date, (2) if Landlord has not obtained the TCO on or before the date that is 90 days after Tenant's Occupancy Date (the "Second Outside Tenant's Occupancy Date"), the Rent Commencement Date shall thereafter be extended by one and one-quarter (1 ¼) day for each day that Landlord has not obtained the TCO after the Second Outside Tenant's Occupancy Date until the earlier of the date Landlord obtains the TCO, or would have obtained the TCO but for any Tenant Delay or Unavoidable Delay, and the Third Outside Tenant's Occupancy Date and (3) if Landlord has not obtained the TCO on or before the date that is 90 days after the Second Outside Tenant's Occupancy Date (the "Third Outside Tenant's Occupancy Date"), the Rent Commencement Date shall thereafter be extended by one and one-half (1 ½) day for each day that Landlord has not obtained the TCO after the Third Outside Tenant's Occupancy Date until the date Landlord obtains the TCO or would have obtained the TCO but for any Tenant Delay or Unavoidable Delay. Notwithstanding anything to the contrary contained herein, after Tenant substantially completes Tenant's Initial Work Tenant shall notify Landlord in writing ("Tenant's Occupancy Notice") of the anticipated Tenant's Occupancy Date at least 10 Business Days prior to the occurrence thereof (together with reasonable supporting documentation showing that Tenant has made arrangements to occupy the Premises for the ordinary conduct of business on such anticipated Tenant's Occupancy Date), failing which Tenant's Occupancy Date shall be deemed to be the later of (1) the date that is 10 Business Days after the date Landlord delivers Tenant's Occupancy Notice to Landlord and (2) the date Tenant is ready, willing and able to occupy the Premises for the ordinary conduct of business.

(iv) If Landlord has not obtained the TCO (as hereinafter defined) on or before the date that is 285 days after the Possession Date (as such date shall be extended on a day for day basis for each day of Tenant Delay and Unavoidable Delay, the "Outside Holdover Date") and, solely by reason of Landlord's failure to obtain the TCO on or before the Outside Holdover Date, Tenant shall actually be delayed in completing Tenant's Initial Work and occupying all or a portion of the Premises for the conduct of Tenant's business and Tenant is holding over in the 10 HY Premises solely as a result thereof, Landlord shall reimburse Tenant for the 10 HY Indemnity Obligations for each day that Landlord has not obtained the TCO after the Outside Holdover Date until the tenth (10th) Business Day after Landlord obtains the TCO or would have obtained the TCO but for any Tenant Delay or Unavoidable Delay. "10 HY Premises" means the portion of the 40<sup>th</sup> floor of the building known as 10 Hudson Yards, New York, New York leased by Tenant pursuant to the 10 HY Lease. "10 HY Lease" means that certain Lease dated as of the date hereof between Legacy Yards Tenant LP and Tenant. "10 HY Indemnity Obligations" means the aggregate amount of (A) the 10 HY Holdover Rental, minus (B) the Current 10 HY Rental, plus any indemnification obligations actually paid by Tenant pursuant to Section 6.10(i)(b) of the 10 HY Lease with respect to a New Tenant (as defined in the 10 HY Lease). "10 HY Holdover Rental" means the holdover rental actually paid by Tenant with respect to the 10 HY Premises pursuant to Section 6.10(i) of the 10 HY Lease. "Current 10 HY Rental" means the Rent (as defined in the 10 HY Lease) which would be payable by Tenant under the 10 HY Lease with respect to the 10 HY Premises had the term of the 10 HY Lease with respect to the 10 HY Premises continued during such period on the same terms as were in effect immediately prior to the 40th Floor Expiration Date (as defined in the 10 HY Lease).

(v) without duplication of Landlord's reimbursement obligations under clause (iv) but subject to the provisions of Section 4.01(d), if Tenant is unable to perform Tenant's Initial Work or open for the conduct of business on or before the Outside Holdover Date to the extent resulting solely from any Landlord Delay or any Violation, and solely by reason of such Landlord Delay or Violation Tenant is holding over in the 10 HY Premises, then Landlord shall reimburse Tenant for the 10 HY Indemnity Obligations for each day such inability continues as a result of such Landlord Delay or Violation until the earlier to occur of (x) such Landlord Delay or Violation is cured and (y) the date Tenant is able to perform Tenant's Initial Work or open for the conduct of business.

**1.04 Use.** (a) Subject to compliance with Laws, the Premises shall be used and occupied by Tenant (and any permitted subtenants and Desk Space Users) solely for executive, administrative and general office use and Customary Ancillary Uses in connection therewith as shall be reasonably required by Tenant in the operation of its business, in each case, consistent with the standards and character of a first-class office building located in midtown Manhattan of comparable size, quality and character to the Building ("First Class Office Building"), only, and for no other purpose. For purposes of this Lease, "Customary Ancillary Uses" shall mean the following ancillary uses; provided, that such Customary Ancillary Uses are (x) ancillary to the primary use of the Premises for executive, administrative and general offices, (y) primarily for the use of Tenant's employees, business invitees and other persons expressly entitled to use the Premises pursuant to the terms of this Lease (collectively, "Permitted Users") and for the use of operations within the Building and (z) permitted in accordance with all Laws (it being acknowledged that Landlord makes no representation that any of such ancillary uses are so permitted):

(i) training facilities and classrooms in connection with Tenant's training programs for the exclusive use of Permitted Users;

(ii) subject to the provisions of Section 8.20 hereof, cafeterias, dining facilities and pantries solely for (x) reheating food via microwave or similar food warming equipment, (y) serving prepared food and beverages delivered from vendors and (z) vending machines (each, a "Dining Facility") and vending machines, in each case, for the exclusive use of Permitted Users (it being agreed that no cooking, involving an open flame or which will require venting to the exterior of the Building other than through the Building's general exhaust system may be done therein);

(iii) duplicating, reproduction and/or offset or other printing facilities (provided that Tenant shall cause such facilities to be constructed, operated and maintained so that no noise or vibration will emanate from the Premises to any other portions of the Buildings);

(iv) board rooms, conference rooms and meeting rooms for the exclusive use of Permitted Users;

(v) storage rooms;

(vi) shipping and mail rooms;

(vii) computer and data processing rooms;

(viii) a nursing station for the exclusive use of Permitted Users;

(ix) health and exercise facilities with showers for the exclusive use of Permitted Users (provided that (A) the entire floor on which any such exercise facility is located and the entire floor immediately below the floor on which such exercise facility is located shall be leased to Tenant, and (B) Tenant shall cause such exercise facility to be constructed, operated and maintained so that no noise or vibration (in each case, other than to a *de minimis* extent) will emanate from the Premises to other portions of the Building, it being agreed that if any other tenant or occupant complains to Landlord in good faith about such noise or vibration, then such noise or vibration shall be deemed to be emanating from the Premises to more than a *de minimis* extent);

(x) private showers and lavatory facilities for the exclusive use of Permitted Users;

(xi) a travel office for the exclusive use of Permitted Users; and

(xii) one or more automatic teller machines (“ATMs”) for the exclusive use of Permitted Users (provided that Tenant agrees to maintain such ATMs with Landlord’s preferred banking vendor at the Project if requested by Landlord and Tenant, at Tenant’s sole cost and expense, shall (A) comply with all Laws with respect to the ownership, use, operation, maintenance and repair of the ATMs, (B) maintain and keep in full force and effect all licenses, permits and other approvals required with respect to the ownership, use, operation, maintenance and repair of the ATMs, (C) implement such measures as may be required by Laws, or which Landlord shall reasonably require, to secure the area in and around the ATMs and to otherwise ensure the safety and security of all persons using, operating, maintaining or repairing the ATMs and (D) obtain and keep in full force and effect such insurance as Landlord may reasonably require with respect to the ATMs and the operations thereof).

(b) Except to the extent expressly permitted pursuant to Section 1.04(a), in no event shall the Premises be used for any of the following: (a) a banking, trust company, or safe deposit business, in each case open for business to the general public, (b) a savings bank, a savings and loan association, or a loan company, in each case open for business to the general public, (c) the sale of travelers' checks and/or foreign exchange, in each case open for business to the general public, (d) a stock brokerage office whose business involves off-the-street retail sales to the general public, (e) a restaurant, bar or for the sale of food or beverages (except to the extent expressly permitted pursuant to Section 1.04(a)(ii)), (f) photographic reproductions and/or offset printing (other than such incidental printing as Tenant may perform in connection with the conduct of Tenant's usual business operations (and as otherwise expressly permitted pursuant to Section 1.04(a)(iii)), (g) an employment or travel agency (except to the extent expressly permitted pursuant to Section 1.04(a)(vii)), (h) a school or classroom (except to the extent expressly permitted pursuant to Section 1.04(a)(i)), (i) medical or psychiatric offices (except to the extent expressly permitted pursuant to Section 1.04(a)(viii)), (j) conduct of an auction, (k) gambling activities, (l) conduct of obscene, pornographic or similar disreputable activities, (m) offices of an agency, department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them, (n) offices of any charitable, religious, union or other not-for-profit organization, (o) offices of any tax exempt entity within the meaning of Section 168(h)(2) of the Internal Revenue Code of 1986, as amended, or any successor or substitute statute, or rule or regulation applicable thereto or (p) manufacturing. The Premises shall not be used for any purpose which would lower the first-class character of the Building, create unreasonable or excessive elevator or floor loads, impair or interfere with any of the Building operations or the proper and economic heating, ventilation, air-conditioning, cleaning or other servicing of the Building, constitute a public or private nuisance, or interfere with any other tenant or Landlord, or impair the appearance of the Building.

(c) Landlord shall obtain a temporary certificate of occupancy for the Building core (the "TCO") and Landlord agrees that the TCO when issued for the Building, and any subsequent temporary or permanent base building certificate of occupancy obtained by Landlord, will permit the use of the Premises for offices. Landlord shall use commercially reasonable efforts to obtain the TCO on or before Tenant's Occupancy Date, it being agreed that Tenant's sole and exclusive remedy for Landlord's failure to obtain the TCO on or before Tenant's Occupancy Date is set forth in Section 1.03(c)(iii). If Tenant requires an amendment to such certificate of occupancy of the Building to use the Premises for any of the uses permitted pursuant to this Section 1.04 other than mere office use, Landlord, at Tenant's expense, shall file for and use commercially reasonable efforts to obtain such an amendment to the certificate of occupancy; provided, that neither this Lease nor any of Tenant's obligations hereunder shall be conditioned upon Landlord obtaining the same. If Tenant desires to obtain any special permits for use of the Premises (including, for purposes of illustration only, and not by way of limitation, a public assembly permit or a temporary or permanent liquor license for the serving of alcohol to Tenant's employees and business invitees for consumption in the Premises only (it being agreed that Tenant shall have procured and furnished to Landlord a policy of liquor liability insurance reasonably satisfactory to Landlord in connection therewith and Tenant shall reimburse Landlord for any increased insurance costs incurred by Landlord in connection therewith), Landlord, at Tenant's expense, shall reasonably cooperate with respect to the same to the extent such cooperation is reasonably necessary; provided, that obtaining any such permits shall be the sole responsibility of Tenant. If Landlord shall incur any actual out-of-pocket cost in connection with such cooperation or the amendment to the certificate of occupancy, Tenant shall, within 30 days after receipt of an invoice therefor, reimburse Landlord for such costs as Additional Charges.

## ARTICLE 2

### Rent

**2.01** Rent. “Rent” shall consist of Fixed Rent and Additional Charges.

**2.02** Fixed Rent. The fixed rent (“Fixed Rent”) shall be as follows:

(a) for the period commencing on the Rent Commencement Date and ending on the day immediately preceding the 5th anniversary of the Rent Commencement Date at the rate per annum of \$93.00 per rentable square foot of the Premises;

(b) for the period commencing on the 5th anniversary of the Rent Commencement Date and ending on the day immediately preceding the 10th anniversary of the Rent Commencement Date at the rate per annum of \$102.00 per rentable square foot of the Premises; and

(c) for the period commencing on the 10th anniversary of the Rent Commencement Date and ending upon the Expiration Date (or, if the Term is extended pursuant to Article 9, the date of expiration of the initial Term) at the rate per annum of \$112.00 per rentable square foot of the Premises.

(d) Fixed Rent shall be payable by Tenant in equal monthly installments in advance on the Rent Commencement Date and on the first day of each calendar month thereafter (provided that if the Rent Commencement Date is not the first day of a month, then Fixed Rent for the month in which the Rent Commencement Date occurs shall be prorated and paid on the Rent Commencement Date). “Rent Commencement Date” means the date occurring in the 12th month after the Possession Date which is the same numerical date in the month as the Possession Date (except that if no same numerical date shall exist in such 12th month, the Rent Commencement Date shall be the last day of such 12th month. The Rent Commencement Date may be subject to adjustment as expressly provided in Sections 1.03(c), 4.01(d)(iii) and 4.01(d)(iv) of this Lease.

**2.03** Additional Charges. “Additional Charges” means PILOT Payments, Additional Tax Payments, Impositions Payments, Tax Payments, Operating Payments and all other sums of money, other than Fixed Rent, at any time payable by Tenant under this Lease, all of which Additional Charges shall be deemed to be rent. “Recurring Additional Charges” means Additional Tax Payments, Impositions Payments, Operating Payments and either PILOT Payments or Tax Payments, as applicable.

**2.04** PILOT Payments. (a) “Base PILOT Amount” means the PILOT Amount payable by Landlord pursuant to the PILOT Agreement for the Tax Year commencing on July 1, 2021 (the “Base PILOT Year”) pursuant to the terms of the PILOT Agreement as in effect as of the Effective Date. “PILOT Amount” shall have the meaning ascribed to such term in the PILOT Agreement, as such PILOT Agreement is in effect on the Effective Date.

(b) “PILOT Agreement” means that certain Agency Lease Agreement, dated as of December 1, 2014, by and between the New York City Industrial Development Agency (the “IDA”) and Landlord, as the same may be modified from time to time; provided, however, that any modification of such PILOT Agreement which would materially adversely affect or materially adversely increase Tenant’s obligations under this Article 2 shall be disregarded for the purpose of computing Tenant’s liability for PILOT Payments under this Article 2 (it being agreed that Landlord shall not be restricted from entering into any such modification but Landlord shall not have the right to pass through any such obligations that materially adversely affect Tenant under this Article 2). Landlord represents and warrants to Tenant that a true and complete copy of the PILOT Agreement has been delivered or made available to Tenant.

(c) “PILOT” means, with respect to any Tax Year, (i) the PILOT Amount payable by Landlord for such Tax Year pursuant to the PILOT Agreement, (ii) any reasonable expenses incurred in contesting the assessed value of the Project (which expenses shall not exceed the amount of any refund or credit attributable to any reduced assessment resulting from such contest), which expenses shall be allocated to the Tax Year(s) to which such expenses relate and (iii) the “Annual Administrative Fee” (as defined in the PILOT Agreement).

(d) “Tax Year” means each period of 12 months, commencing on the first day of July of each such period, in which occurs any part of the Term, or such other period of 12 months occurring during the Term as hereafter may be adopted as the fiscal year for real estate tax purposes of the City of New York.

(e) “Tenant’s Share” means the percentage which is calculated by dividing (i) the total rentable square footage of the Premises by (ii) the total rentable square footage of the Building, provided that the method of calculating the rentable square footage of the Premises shall be the same as the method of calculating the rentable square footage of the Building at the time of any such calculation. For the avoidance of doubt, the square footage of the Vent Building (as such term is defined in that certain Easement Agreement, dated as of October 12, 2010, among Strategic/Extell 34th Street, LLC and the City of New York and recorded in the Office of the City Register as CRFN 201000394319) shall not be included in the rentable square footage of the Building or any portion thereof for any purpose under this Lease. The parties acknowledge and agree that Tenant’s Share as of the date hereof with respect to the initial Premises demised hereunder is 5.82%, it being agreed that such percentage is subject to re-measurement and adjustment in accordance with and subject to Section 1.01 and the other terms and conditions of this Lease.

(f) (i) If PILOT for any Tax Year from and after July 1 of the Tax Year immediately following the Base PILOT Year (i.e., from and after the day immediately following the last day of the Base PILOT Year) until the “Cessation Date” (as defined in the PILOT Agreement; such date shall hereinafter be referred to in this Lease as the “PILOT Cessation Date”), shall exceed the Base PILOT Amount (or, with respect to the Tax Year in which the PILOT Cessation Date occurs, if the PILOT Cessation Date occurs on a date other than the first day of a Tax Year, if PILOT for such Tax Year shall exceed the amount that is the product of the Base PILOT Amount multiplied by a fraction, the numerator of which is the number of days in such Tax Year prior to the PILOT Cessation Date and the denominator of which is the number of days in such Tax Year), Tenant shall pay to Landlord (each, a “PILOT Payment”) Tenant’s Share of the amount by which PILOT for such Tax Year is greater than the Base PILOT Amount. The PILOT Payment for each Tax Year shall be due and payable by Tenant in installments in the same manner that PILOT for such Tax Year is due and payable by Landlord, whether as directed under the PILOT Agreement, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay the PILOT Payment (or any installment thereof) within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require the PILOT Payment (or installment thereof) to be paid by Tenant 30 days prior to the date such PILOT Payment (or installment thereof) first becomes due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) of PILOT being billed. If there shall be any increase in the PILOT for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the PILOT for any Tax Year, the PILOT Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.04(g) and 2.08(a), to the extent applicable). In no event, however, shall PILOT be reduced below the Base PILOT Amount.

(ii) In addition to the PILOT Payments set forth above, and the Impositions Payment and Tax Payment set forth below, Tenant shall pay, as Additional Charges on account of real property taxes, for each Tax Year (or portion thereof) throughout the Term of this Lease from and after the Tax Year commencing on July 1, 2018, an amount equal to the product of (A) the applicable Additional Tax Amount, multiplied by (B) the number of rentable square feet contained in the Premises (the “ Additional Tax Payment ”); provided, that if the rentable square footage of the Premises varies during any calendar year, such variation shall be taken into account for purposes of the calculation of the Additional Tax Payment for such calendar year. The Additional Tax Payment shall be due and payable in equal installments on the dates on which PILOT Payments (or installments thereof) are due and payable by Tenant. Tenant shall pay each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require such installments to be paid by Tenant on the same dates on which Tenant is required to pay PILOT Payments (or installments thereof). The “ Additional Tax Amount ” shall be (I) \$0 for the Tax Year beginning July 1, 2018, (II) \$0.75 for the Tax Year beginning on July 1, 2019, (III) \$1.75 for the Tax Year beginning on July 1, 2020 and (IV) \$3.25 for each Tax Year thereafter for the full remaining Term of this Lease. By way of example, if the Premises contains 100,000 rentable square feet during the Tax Year beginning on July 1, 2021, the Additional Tax Payment for the Tax Year beginning on such July 1 shall be \$325,000.00 (i.e.,  $\$3.25 \times 100,000 = \$325,000.00$ ).

(g) If Landlord shall receive a refund of PILOT for any Tax Year in which PILOT exceeded the Base PILOT Amount (or a credit in lieu of such a refund), Landlord shall pay to Tenant Tenant’s Share of the net refund or credit (after deducting from such refund or credit the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the PILOT for such Tax Year and only to the extent that such costs and expenses shall not exceed the amount of any refund or credit of Tenant’s Share of PILOT for the corresponding Tax Year); provided, that such payment to Tenant shall in no event exceed Tenant’s PILOT Payment paid for such Tax Year.

(h) If the PILOT Amount comprising the Base PILOT Amount is reduced as a result of an appropriate proceeding or otherwise, the PILOT as so reduced shall for all purposes be deemed to be the Base PILOT Amount and Landlord shall notify Tenant of the amount by which the PILOT Payments previously made were less than the PILOT Payments required to be made under this Section 2.04, and Tenant shall pay the deficiency within 30 days after demand therefor.

(i) (i) Tenant shall promptly cooperate with Landlord in complying with the disclosure and reporting requirements set forth in the PILOT Agreement, including, without limitation, by furnishing such information and/or completing such questionnaires and reports as may be required to satisfy the requirements of Section 8.7 (Employment Matters), Section 8.8 (Non-Discrimination), Section 8.14 (Automatically Deliverable Documents), Section 8.15 (Requested Documents) and Section 8.16 (Periodic Reporting Information for the Agency) of the PILOT Agreement. Tenant shall furnish any such information and deliver any such completed questionnaires and reports to Landlord on or prior to the date that is 10 Business Days before the date Landlord is required to deliver same to the IDA (unless the period between a request to Landlord from the IDA for any such information, questionnaires or reports and the date such information, questionnaires or reports are due to the IDA is shorter than 10 Business Days, in which case Tenant shall deliver such information, questionnaires or reports to Landlord no less than 3 Business Days prior to the date Landlord is required to deliver same to the IDA).

(ii) Tenant represents and warrants that Tenant's occupancy at the Project will not result in the removal of an industrial or manufacturing plant or facility of Tenant located outside of the City of New York, but within the State of New York, to the Project or in the abandonment of one or more such industrial or manufacturing plants or facilities of Tenant located outside of the City of New York but within the State of New York.

(iii) Tenant represents and warrants that neither Tenant, nor any Principals of Tenant (A) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, (B) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past 5 years, (C) has been convicted of a felony in the past 10 years, (D) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense, or (E) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum. For purposes of this paragraph (iii) only, all capitalized terms used in this paragraph (iii) (other than the term "Tenant") shall have the meanings ascribed to them in the PILOT Agreement.

(iv) Tenant covenants that at all times from and after the Effective Date through the expiration or earlier termination of this Lease (the “Effective Period”), Tenant shall ensure that employees and applicants for employment with Tenant are treated without regard to their race, color, creed, age, sex or national origin. As used in this paragraph (iv) only, the term “treated” shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(v) Tenant shall indemnify and hold Landlord harmless from and against any and all loss, cost, liability, damage or expense (including, without limitation, reasonable attorneys’ fees, disbursements and court costs, but specifically excluding any consequential, special or punitive damages) incurred by Landlord (or any of its Affiliates) arising from any failure of Tenant to comply in all respects with Sections 2.04(i)(i) or 2.04(i)(iv) or any misrepresentation by Tenant contained in Sections 2.04(i)(ii) or 2.04(i)(iii) or arising from any other “Event of Default” (as defined in the PILOT Agreement) under the PILOT Agreement which is solely caused by any act or omission of, or breach of any representation or warranty by, Tenant, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents, in each case, beyond any applicable notice and cure periods set forth in the PILOT Agreement (including, without limitation, Section 8.9(f)(iii) of the PILOT Agreement). If any amount payable by Landlord under the PILOT Agreement is greater than it would otherwise be, or if any additional amount is payable by Landlord under the PILOT Agreement, in either case, due to any failure of Tenant to comply in all respects with Sections 2.04(i)(i) or 2.04(i)(iv) or any misrepresentation by Tenant contained in Sections 2.04(i)(ii) or 2.04(i)(iii), Tenant shall pay to Landlord 100% of the amount by which such amount payable is so greater than it would otherwise be or 100% of the additional amount payable, as the case may be, within 10 days after Landlord’s demand therefor.

(vi) Landlord agrees to observe and perform all of its obligations under the PILOT Agreement and not to cause or permit an Event of Default (as defined in the PILOT Agreement) to occur thereunder if and to the extent Landlord’s failure to observe and perform any such obligations or to permit such Event of Default, as applicable, is reasonably likely to materially adversely affect Tenant’s obligations under this Article 2. Landlord shall indemnify and hold Tenant harmless from and against any and all loss, cost, liability, damage or expense (including, without limitation, reasonable attorneys’ fees, disbursements and court costs, but specifically excluding any consequential, special or punitive damages) incurred by Tenant or any of its Affiliates arising from any “Event of Default” (as defined in the PILOT Agreement) under the PILOT Agreement beyond any applicable notice and cure periods set forth therein which is solely caused by Landlord, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents and which is not caused by any act or omission of, or breach of any representation or warranty by, Tenant. If any amount payable by Landlord under the PILOT Agreement is greater than it would otherwise be, or if any additional amount is payable by Landlord under the PILOT Agreement, in either case, due to any “Event of Default” (as defined in the PILOT Agreement) under the PILOT Agreement which is solely caused by Landlord, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents and which is not caused by any act or omission of, or breach of any representation or warranty by, Tenant, or any of its Affiliates, or any of their respective officers, members, directors, principals, employees or agents, Tenant shall have no liability to pay for any of such incremental amount by which Landlord’s payment obligation is so greater or such additional amount and Landlord will reasonably promptly provide Tenant with any information reasonably required to verify such amounts.

(j) Landlord shall, with respect to each Tax Year, initiate and pursue in good faith an application or proceeding seeking a reduction in the assessed valuation of the Building, except that Landlord shall not be required to initiate or pursue any such application or proceeding for any such Tax Year if Landlord obtains with respect to such Tax Year a letter from a reputable certiorari attorney that in such person's opinion it would not be advisable or productive to bring such application or proceeding for the Tax Year in question. Tenant, for itself and its immediate and remote subtenants and successors in interest hereunder, hereby waives, to the extent permitted by law, any right Tenant may now or in the future have to protest or contest any PILOT or Taxes or to bring any application or proceeding seeking a reduction in PILOT, Taxes or assessed valuation or otherwise challenging the determination thereof.

## **2.05 Impositions**

(a) “Base Impositions Amount” means Impositions (excluding any amounts described in Section 2.05(b)(ii)) for the Tax Year commencing on July 1, 2018.

(b) “Impositions” means (i) subject to clause (B) of the last sentence of this Section 2.05(b), any and all real estate taxes, vault taxes, assessments and special assessments, levied, assessed or imposed upon or with respect to the Project by any federal, state, municipal or other government or governmental body or authority, including, without limitation, any taxes, assessments or charges imposed upon or against the Project or Landlord solely with respect to any business improvement district and (ii) any reasonable expenses incurred by Landlord in contesting such taxes, assessments or charges, which expenses shall be allocated to the Tax Year to which such expenses relate to the extent that such expenses do not exceed the amount of any reduction in Impositions for the corresponding Tax Year. If at any time the method of taxation shall be altered so that in lieu of or as an addition to or as a substitute for, the whole or any part of such taxes theretofore imposed on real estate (other than real estate taxes levied by the City of New York) there shall be levied, assessed or imposed (x) a tax, assessment, levy, imposition, fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (y) any other such substitute tax, assessment, levy, imposition, fee or charge, including without limitation, business improvement district and transportation taxes, fees and assessments, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be included in “Impositions” to the extent that such substitution is evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof, or other documents or evidence that reasonably demonstrate that the applicable governmental authority intended for such tax or assessment to constitute a substitution for any Impositions (provided that the same shall be computed as if the Project is Landlord's sole asset and the income therefrom is Landlord's sole income). If the owner, or lessee under a Superior Lease (as hereinafter defined), of all or any part of the Project is an entity exempt from the payment of taxes, assessments or charges described in clause (i), there shall be included in “Impositions” the taxes, assessments or charges described in clause (i) which would be so levied, assessed or imposed if such owner or lessee were not so exempt, and such taxes, assessments or charges shall be deemed to have been paid by Landlord on the dates on which such taxes, assessments or charges otherwise would have been payable if such owner or lessee were not so exempt but only to the extent Landlord is actually obligated to and does pay such taxes, assessments or charges or any payments in lieu thereof. If any Impositions consisting of a special tax assessment may be payable in installments, then, for the purposes of this Section 2.05 such Impositions shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law (together with any interest charged by the applicable government authority, if interest is so charged), and there shall be deemed included in Impositions for each Tax Year only the installments of such assessment deemed to be payable during such Tax Year. “Impositions” shall not include (A) any municipal, state or federal income taxes assessed against Landlord, any capital levy, estate, gift, succession, inheritance or transfer taxes, or any corporate franchise taxes or unincorporated business taxes, income or profit tax, or any transfer or mortgage recording tax imposed upon any owner or lessee of the Project, or any part thereof, or capital levy that is or may be imposed upon the net income of Landlord, (B) any PILOT and Taxes and (C) any penalties, interest and late charges imposed on Landlord, any Superior Lessor or Superior Mortgagee for failure to make payments when due, except to the extent directly resulting from a default by Tenant hereunder.

(c) For each Tax Year from and after the Tax Year commencing on July 1, 2019, if Impositions for any Tax Year shall exceed the Base Impositions Amount, Tenant shall pay to Landlord (each, an “Impositions Payment”) Tenant’s Share of the amount by which Impositions for such Tax Year are greater than the Base Impositions Amount. The Impositions Payment for each Tax Year shall be due and payable in installments in the same manner that Impositions for such Tax Year are due and payable by Landlord, whether to the applicable taxing authority, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay Tenant’s Share of each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require Tenant’s Share of Impositions to be paid by Tenant 30 days prior to the date such Impositions first become due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) being billed. If there shall be any increase in the Impositions for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Impositions for any Tax Year, the Impositions Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.05(d) and 2.08(a), to the extent applicable). In no event, however, shall Impositions be reduced below the Base Impositions Amount.

(d) If Landlord shall receive a refund of Impositions for any Tax Year in which Impositions exceeded the Base Impositions Amount, Landlord shall pay to Tenant Tenant’s Share of the net refund (after deducting from such refund the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the Impositions for such Tax Year and to the extent that such expenses do not exceed the amount of any reduction in Tenant’s Share of Impositions for the corresponding Tax Year); provided, that such payment to Tenant shall in no event exceed Tenant’s Impositions Payment paid for such Tax Year.

(e) If the Base Impositions Amount is reduced as a result of an appropriate proceeding or otherwise, Landlord shall notify Tenant of the amount by which any Impositions Payments previously made were less than the Impositions Payments required to be made under this Section 2.05, and Tenant shall pay the deficiency within 30 days after demand therefor.

(f) Tenant shall pay any and all commercial rent occupancy tax and any other occupancy tax or rent tax relating to the Premises now in effect or hereafter enacted. If any occupancy tax or rent tax (including, without limitation, any commercial rent occupancy tax) now in effect or hereafter enacted shall be payable by Landlord in the first instance or hereafter is required to be paid by Landlord, then Tenant shall reimburse Landlord as Additional Charges for all such amounts paid within 30 days after demand therefor.

**2.06 Tax Payments.** (a) “Taxes” means (i) the real estate taxes levied, assessed or imposed upon or with respect to the Project by the City of New York and (ii) any reasonable expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Project, which expenses shall be allocated to the Tax Year to which such expenses relate. If at any time the method of taxation shall be altered so that in lieu of or as an addition to or as a substitute for, the whole or any part of such real estate taxes theretofore imposed there shall be levied, assessed or imposed (x) a tax, assessment, levy, imposition, fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (y) any other such substitute tax, assessment, levy, imposition, fee or charge, including without limitation, business improvement district and transportation taxes, fees and assessments, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be included in “Taxes” to the extent substituted and to the extent that such substitution is evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof, or other documents or evidence that reasonably demonstrate that the applicable governmental authority intended for such tax or assessment to constitute a substitution for any Taxes (provided that the same shall be computed as if the Project is Landlord’s sole asset and the income therefrom is Landlord’s sole income). If the owner, or lessee under a Superior Lease, of all or any part of the Project is an entity exempt from the payment of taxes described in clause (i), there shall be included in “Taxes” the taxes described in clause (i) which would be so levied, assessed or imposed if such owner or lessee were not so exempt and such taxes shall be deemed to have been paid by Landlord on the dates on which such taxes otherwise would have been payable if such owner or lessee were not so exempt but only to the extent Landlord is actually obligated to and does pay such taxes, assessments or charges or any payments in lieu thereof. If any Taxes consisting of a special tax assessment may be payable in installments, then, for the purposes of this Section 2.06 such Taxes shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law (together with any interest charged by the applicable government authority, if interest is so charged), and there shall be deemed included in Taxes for each Tax Year only the installments of such assessment deemed to be payable during such Tax Year. “Taxes” shall not include (A) any municipal, state or federal income taxes assessed against Landlord, any capital levy, estate, gift, succession, inheritance or transfer taxes, or any corporate franchise taxes or unincorporated business taxes, income or profit tax, or any transfer or mortgage recording tax imposed upon any owner or lessee of the Project, or any part thereof, or capital levy that is or may be imposed upon the net income of Landlord, (B) any PILOT and Impositions and (C) any penalties, interest and late charges imposed on Landlord, any Superior Lessor or Superior Mortgagee for failure to make payments when due, except to the extent directly resulting from a default by Tenant hereunder.

(b) (i) From and after the PILOT Cessation Date, if Taxes for any Tax Year, including the Tax Year in which the PILOT Cessation Date occurs, shall exceed the Base PILOT Amount (or, with respect to the Tax Year in which the PILOT Cessation Date occurs, if the PILOT Cessation Date occurs on a date other than the first day of a Tax Year, if Taxes for such Tax Year shall exceed the amount that is the product of the Base PILOT Amount multiplied by a fraction, the numerator of which is the number of days in such Tax Year from and after the PILOT Cessation Date and the denominator of which is the number of days in such Tax Year), Tenant shall pay to Landlord (each, a “Tax Payment”) Tenant’s Share of the amount by which Taxes for such Tax Year (or portion thereof from and after the PILOT Cessation Date) are greater than the Base PILOT Amount (or such pro-rated amount described in the first parenthetical in this sentence, if applicable). The Tax Payment for each Tax Year shall be due and payable in installments in the same manner that Taxes for such Tax Year are due and payable by Landlord, whether to the City of New York, to a Superior Lessor or Superior Mortgagee or otherwise. Tenant shall pay Tenant’s Share of each such installment within 30 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require Tenant’s Share of Taxes to be paid by Tenant 30 days prior to the date such Taxes first become due and payable by Landlord. The statement to be rendered by Landlord shall set forth in reasonable detail the computation of Tenant’s Share of the particular installment(s) being billed. If there shall be any increase in the Taxes for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, the Tax Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be (in accordance with Sections 2.06(c) and 2.08(a), to the extent applicable). In no event, however, shall Taxes be reduced below the Base PILOT Amount.

(ii) Notwithstanding the occurrence of the PILOT Cessation Date, after the PILOT Cessation Date Tenant shall continue to pay Additional Tax Payments as set forth in Section 2.04(f)(ii), except that such Additional Tax Payments shall be due and payable in installments on the dates on which Tax Payments (or installments thereof) are due and payable by Tenant, and Tenant shall pay each such installment within 10 days after the rendering of a statement therefor by Landlord to Tenant, which statement may be rendered so as to require such installments to be paid by Tenant on the same dates on which Tenant is required to pay Tax Payments (or installments thereof).

(c) If Landlord shall receive a refund of Taxes for any Tax Year in which Taxes exceeded the Base PILOT Amount (from and after the occurrence of the PILOT Cessation Date), Landlord shall pay to Tenant Tenant’s Share of the net refund (after deducting from such refund the reasonable costs and expenses of obtaining the same, including, without limitation, appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the Taxes for such Tax Year and to the extent that such expenses do not exceed the amount of any reduction in Tenant’s Share of Taxes for the corresponding Tax Year); provided, that (i) such payment to Tenant shall in no event exceed Tenant’s Tax Payment paid for such Tax Year and (ii) if the PILOT Cessation Date occurs on a date other than the first day of any Tax Year, any refund with respect to such Tax Year shall be prorated to correspond to the portion of such Tax Year with respect to which Tenant paid a Tax Payment.

(d) If the Base PILOT Amount is reduced as a result of an appropriate proceeding or otherwise after the PILOT Cessation Date, Landlord shall notify Tenant of the amount by which any Tax Payments previously made were less than the Tax Payments required to be made under this Section 2.06, and Tenant shall pay the deficiency within 30 days after demand therefor.

**2.07 Operating Payments.** (a) “ Base Operating Amount ” means Operating Expenses for the Base Operating Year; provided, that, if, due to construction warranties in effect during the Base Operating Year, materially fewer expenses on account of repairs to the Building are paid or incurred by or on behalf of Landlord during such Base Operating Year than would typically be paid or incurred during a calendar year with respect to a new First Class Office Building comparable in size to the Building with no construction warranties in effect, then the Operating Expenses for the Base Operating Year shall be adjusted to reflect the Operating Expenses that would have been paid or incurred if such construction warranties had not been in effect during the Base Operating Year. For purposes of the foregoing sentence only, the term “construction warranties” shall be deemed to refer solely to warranties in effect for a newly constructed First Class Office Building that would not typically be in effect at any given time for a First Class Office Building on account of alterations, improvements, repairs and replacements.

(b) “ Base Operating Year ” means the calendar year 2019.

(c) “ Landlord’s Statement ” means an instrument setting forth the Operating Payment payable by Tenant for a specified Operating Year.

(d) “Operating Expenses” means, without duplication, all expenses paid or incurred by or on behalf of Landlord in respect of the repair, replacement, maintenance, operation and security of the Project as reflected on Landlord’s books and records (which Landlord shall keep in accordance with GAAP or other acceptable accounting method consistent with the standards of a First Class Office Building), including, without limitation, (i) subject to clause (BB) of this Section 2.07(d), salaries, wages, medical, surgical, insurance (including, without limitation, group life and disability insurance), union and general welfare benefits, pension payments, severance payments, sick day payments and other fringe benefits of employees of Landlord, Landlord’s affiliates and their respective contractors engaged in such repair, replacement, maintenance, operation and/or security; (ii) subject to clause (BB) of this Section 2.07(d), payroll taxes, worker’s compensation, uniforms and related expenses (whether direct or indirect) for such employees; (iii) the cost of fuel, gas, steam, electricity, heat, ventilation, air-conditioning and chilled or condenser water, water, sewer and other utilities, together with any taxes and surcharges on, and fees paid in connection with the calculation and billing of, such utilities; (iv) the cost of painting and/or decorating all areas of the Project, excluding, however, any space contained therein which is demised or available for demise to tenants; (v) the cost of casualty, liability, fidelity, rent and all other insurance regarding the Project; (vi) subject to the limitations on capital expenditures hereinafter provided, the cost of all supplies, tools, materials and equipment, whether by purchase or rental, used in the repair, replacement, maintenance, operation and/or security of the Project, and any sales and other taxes thereon; (vii) the fair market rental value of Landlord’s office in the Building and any other premises in the Building utilized by the personnel of either Landlord, Landlord’s affiliates or Landlord’s contractors, in connection with the repair, replacement, maintenance, operation and/or security thereof, and all office expenses, such as telephone, utility, stationery and similar expenses incurred in connection therewith; provided, that (A) for the purpose of calculating Operating Expenses for the Base Operating Year and each subsequent Operating Year, the aggregate rentable square footage of Landlord’s office shall be assigned a fixed number, (B) the fair market rental of such office shall be included in the Base Operating Year, and (C) such fair market rental shall annually be subject to fair market rental increases; (viii) the cost of cleaning and janitorial services, including, without limitation, glass cleaning, snow and ice removal and garbage and waste collection and disposal; (ix) the cost of all interior and exterior landscaping and all temporary exhibitions located at or within the Project; (x) the cost of all alterations, repairs, replacements and/or improvements made at any time following the Base Operating Year by or on behalf of Landlord, whether structural or non structural, ordinary or extraordinary, foreseen or unforeseen, and whether or not required by this Lease, and all tools and equipment related thereto; provided, that if under generally accepted accounting principles consistently applied (“GAAP”), any of the costs referred to in this clause (x) are required to be capitalized, then such costs shall not be included in Operating Expenses unless they (I) are required by any Laws that first became effective (1) on or after the Possession Date or (2) before the Possession Date but with respect to which the obligation to comply first arises after the Possession Date, (II) have the effect of reducing expenses that would otherwise be included in Operating Expenses (to the extent of the reduction in Operating Expenses reasonably anticipated by Landlord) or (III) constitute a replacement which in Landlord’s reasonable judgment is prudent to make in lieu of repairs to the replaced item(s) so long as it is reasonably likely that the amortized replacement cost of the item in question will be less expensive than the aggregate reasonably anticipated total cost to repair such item (which may include multiple repairs) over the same amortization period, in any of which events the cost thereof, together with interest thereon at either (A) if Landlord shall not finance such alterations, repairs, replacements and/or improvements, the Interest Rate in effect on December 31 of the Operating Year in which such costs were incurred or (B) if Landlord shall finance such alterations, repairs, replacements and/or improvements, the actual costs incurred by Landlord to finance such alterations, repairs, replacements and/or improvements shall be amortized and included in Operating Expenses over the useful life of the item in question, as reasonably determined by Landlord in accordance with GAAP or such alternative measure as referred to hereinabove; provided further, that if any such alterations, repairs, replacements and/or improvements described in clause II are made for the purpose of having a beneficial impact on the environment (including, without limitation, if the same are made in connection with participating in a program intended to have a beneficial impact on the environment), then, at Landlord’s option, the cost thereof, together with such interest as described in the foregoing clauses (A) and (B), may be amortized and included in Operating Expenses over the period that Landlord reasonably determines in accordance with GAAP that it will take for such cost to equal the aggregate amount of the reduction in Operating Expenses realized as a result of such alteration, repair, replacement and/or improvement; (xi) costs of security services, including, without limitation, offsite vehicle screening for vehicles seeking access to the Project; (xii) management fees not exceeding 3% of the aggregate rents, additional rents and other charges payable to Landlord by tenants of the Building; (xiii) all reasonable costs and expenses of legal, bookkeeping, accounting and other professional services; (xiv) condominium assessments, common charges or similar charges, if the Project is at any time converted to a condominium structure; (xv) customary fees, dues and other contributions paid by or on behalf of Landlord to civic or other real estate organizations and any assessments, dues, levies or other charges paid to any business improvement district, owners’ association or similar organization or to any entity on behalf of such an organization; (xvi) all costs and expenses expressly included in Operating Expenses pursuant to the provisions of this Lease; and (xvii) all other fees, costs, charges and expenses properly allocable to the repair, replacement, maintenance, operation and/or security of the Project, in accordance with then prevailing customs and practices of the real estate industry in the Borough of Manhattan, City of New York. Notwithstanding the foregoing, “Operating Expenses” shall not include the following:

(A) depreciation and amortization (except with respect to the alterations, repairs, replacements, and/or improvements described in clauses I, II and III of clause (x) of this Section 2.07(d));

(B) principal and interest payments and other costs incurred in connection with any financing or refinancing of the Project or any portion thereof (except as provided in clause (x) above) including, without limitation, legal, accounting, consultant, mortgage, brokerage or other expenses related thereto;

(C) the cost of tenant improvements made for tenant(s) of the Building or cash allowances in lieu thereof;

(D) brokerage commissions and advertising and promotional expenses incurred in procuring tenants for the Building;

(E) cost of any work or service performed for any tenant of the Building (including Tenant), whether at the expense of Landlord or such tenant, to the extent that such work or service is in excess of the work or service that Landlord is required to furnish Tenant under this Lease at the expense of Landlord, and all costs incurred by Landlord in connection with the performance of any sundry services to individual tenants which are not generally provided to all office tenants (including Tenant);

(F) the cost of any electricity consumed in the Premises or in any other space in the Building demised or available for demise to tenants;

(G) the cost of overtime heating, ventilating and air conditioning (including costs related to chilled water) for which Landlord is directly compensated by payment by tenants, or any other occupant of the Building, including Tenant;

(H) PILOT, Impositions and Taxes;

(I) attorneys' fees and disbursements and costs and expenses incurred in connection with preparing and negotiating leases, amendments and modifications thereto, consents to sublease, assignments, takeover or assumption fees, or any form leases with respect to the operation of the Project and disputes with tenants or occupants in the Building;

(J) legal fees incurred in connection with suits brought by tenants with respect to their leases or occupancy agreements in the Building;

(K) any cost to the extent Landlord is reimbursed therefor out of insurance proceeds or otherwise (other than by means of operating expense reimbursement provisions contained in the leases of other tenants) or any such cost to the extent Landlord would have been compensated therefor if Landlord had carried the insurance coverage required of Landlord hereunder;

(L) expenses of relocating or moving any tenant(s) of the Building, and all costs and expenses of taking over or assuming the lease obligations of a tenant for such tenant's premises in a location other than the Project and the costs and expenses of relocating such tenant to the Project, including any payments required to be made in connection with the termination of such lease pursuant to Article 31-B of the Tax Law of the State of New York or other similar statute;

(M) costs (including attorney's fees and costs of settlements, judgments and arbitration awards) arising from claims or disputes in connection with tort or negligence litigation pertaining to Landlord and/or the Project, or in connection with any such claims or disputes arising from Landlord's negligence or willful misconduct;

(N) costs incurred with respect to a sale of all or any portion of the Project or any interest therein or in any person or entity of whatever tier owning an interest therein and the cost of maintaining, organizing or reorganizing the entity that is the landlord under this Lease;

(O) costs of alterations and improvements and other expenditures which are required to be capitalized under GAAP, unless permitted to be included in Operating Expenses under clause (x) of this Section 2.07(d);

(P) any lease payments for equipment which, if purchased, would be specifically excluded as a capital improvement, unless same is permitted to be included in Operating Expenses under clause (x) of this Section 2.07(d);

(Q) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests;

(R) costs of performing the Base Building Work, and the costs incurred to correct any defect discovered during the first eighteen (18) month period following the Possession Date (or such longer period as may be covered under any enforceable warranty or guaranty in connection with the Base Building Work) to the extent resulting from the improper initial construction or design of the Building, and all other hard and soft costs and expenses relating to the initial construction of the Project;

(S) any rent, additional rent or other charge under any ground leases or under Superior Leases (provided, however, that Landlord shall not be required to exclude from Operating Expenses any expense that would otherwise be includable in Operating Expenses pursuant to the terms of this Lease merely because Landlord's obligation under any such ground lease or Superior Lease to incur such expense is characterized as a rental obligation under any such ground lease or Superior Lease);

(T) any cost representing an amount paid to an Affiliate of Landlord to the extent the same is in excess of the amount which would reasonably have been paid in the absence of such relationship;

(U) the cost of any additions to or expansions of the Building that increase the leasable space in the Building;

(V) expenditures for repairing and/or replacing any defect in any work performed by or on behalf of Landlord pursuant to the provisions of this Lease which Landlord is obligated to do at its sole cost and expense, to the extent expenditures for such repairs and/or replacements would have been covered had Landlord obtained a commercially reasonable warranty for such work;

(W) all costs of remediating, removing or encapsulating asbestos, or other hazardous materials or substances in or about the Project, except to the extent the same shall be attributable to any act or omission of Tenant, Tenant's agents, employees, contractors, invitees or licensees;

(X) interest, fines, penalties or other late payment charges paid by Landlord as the result of Landlord's failure to make payments when due, except to the extent (1) that Landlord is contesting such payments timely and in good faith, or (2) resulting from a default by Tenant hereunder;

(Y) to the extent any costs includable in Operating Expenses are incurred with respect to both (1) the Project and (2) other properties, there shall be excluded from Operating Expenses a fair and reasonable percentage thereof which is properly allocable to such other properties;

(Z) costs of withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act, except to the extent that such costs are offset by savings realized by Landlord in connection therewith;

(AA) franchise or income taxes imposed upon Landlord;

(BB) except to the extent specifically permitted in accordance with the provisions of this Section 2.07 to be included in Operating Expenses, Landlord's corporate overhead and general and administrative expenses not specifically allocated to the operation, use, management, maintenance, repair or ownership of the Building, including, without limitation, salaries and the cost of benefits in either case for personnel above the level of building manager;

(CC) costs of acquiring, leasing, insuring, restoring, removing or replacing works of art and sculptures of the quality and nature of "fine art" rather than decorative art work customarily found in First Class Office Buildings; provided, that Landlord shall not be required to exclude from Operating Expenses the costs of insuring and cleaning any such "fine art" to the extent such insurance and cleaning costs are consistent with the costs incurred for such items and generally included in "operating expenses" for purposes of operating expense escalation provisions in other First Class Office Buildings;

(DD) the cost of installing, operating and maintaining any specialty facility such as any emergency generator, co-generation plant(s) and related equipment, an observatory and access thereto, broadcasting facilities, luncheon club, athletic or recreational club, child care facility, auditorium, restaurant, cafeteria or dining facility, conference center or similar specialty facilities (but not the cost of maintaining and operating any satellite antennae facility for use by Building tenants, the Messenger Center, or any of the aforementioned specialty facilities if such facilities are made available at no separate charge (other than an additional rent payment in the nature of an operating expense escalation) for use by tenants (including Tenant) of the Building generally);

(EE) any bad debt loss, rent loss or reserves for bad debts or rent loss; and

(FF) duplicative charges for the same item.

(e) "Operating Year" means each calendar year during the Term.

(f) From and after the day immediately following the expiration of the Base Operating Year, for each Operating Year, Tenant shall pay (each, an "Operating Payment") Tenant's Share of the amount, if any, by which Operating Expenses for such Operating Year exceed the Base Operating Amount. If Tenant's obligation to pay Operating Expenses commences on a date other than January 1, Tenant's Operating Payment for the Operating Year immediately following the Base Operating Year shall be prorated to correspond to the portion of such Operating Year with respect to which Tenant is obligated to pay Operating Expenses pursuant to the terms of this Lease.

(g) If during any relevant period (including, without limitation, the Base Operating Year) (i) less than 95% of the rentable square footage in the Building shall be occupied, and/or (ii) the tenant or occupant of any space in the Building undertook to perform work or services therein in lieu of having Landlord perform the same and the cost thereof would have been included in Operating Expenses, with the result that tenants or occupants of less than 95% of the rentable square footage of the Building are having Landlord perform any such work or service, then, in either such event, the Operating Expenses for such period shall be increased to reflect the Operating Expenses that would have been incurred if 95% of the rentable square footage of the Building had been occupied or if Landlord had performed such work or services for tenants occupying 95% of the rentable square footage of the Building, as the case may be. Additionally, and without limiting the foregoing, it shall be assumed during any relevant period that all services in respect of the Project shall be in place and fully costed (e.g., discounts for the initial period of multi-year contracts shall be appropriately adjusted); and with respect to the calculation of the Operating Expenses for the Base Operating Year only, if and to the extent certain expenses are incurred with respect to only a portion of the Base Operating Year, then such expenses shall be annualized to more closely approximate the cost that will be incurred for such expense over the course of the subsequent full year.

(h) Landlord may furnish to Tenant, prior to the commencement of each Operating Year, a statement setting forth Landlord's reasonable estimate of the Operating Payment for such Operating Year. Tenant shall pay to Landlord on the first day of each month during such Operating Year, an amount equal to 1/12th of Landlord's estimate of the Operating Payment for such Operating Year. If Landlord shall not furnish any such estimate for an Operating Year or if Landlord shall furnish any such estimate for an Operating Year subsequent to the commencement thereof, then (A) until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 2.07 in respect of the last month of the preceding Operating Year; (B) after such estimate is furnished to Tenant, Landlord shall notify Tenant whether the installments of the Operating Payment previously made for such Operating Year were greater or less than the installments of the Operating Payment to be made in accordance with such estimate, and (x) if there is a deficiency, Tenant shall pay the amount thereof within 30 days after demand therefor, or (y) if there is an overpayment, Landlord shall refund to Tenant the amount thereof within 30 days after such determination; and (C) on the first day of the month following the month in which such estimate is furnished to Tenant and monthly thereafter throughout such Operating Year Tenant shall pay to Landlord an amount equal to 1/12th of the Operating Payment shown on such estimate. Landlord may, during each Operating Year, furnish to Tenant a revised statement of Landlord's estimate of the Operating Payment for such Operating Year, and in such case, the Operating Payment for such Operating Year shall be adjusted and paid or refunded as the case may be, substantially in the same manner as provided in the preceding sentence.

(i) Landlord shall furnish to Tenant a Landlord's Statement for each Operating Year (and shall endeavor to do so within 270 days after the end of each Operating Year). If Landlord's Statement shall show that the sums paid by Tenant, if any, under Section 2.07(h) exceeded the Operating Payment to be paid by Tenant for the applicable Operating Year, Landlord shall refund to Tenant the amount of such excess within 30 days after such determination; and if the Landlord's Statement shall show that the sums so paid by Tenant were less than the Operating Payment to be paid by Tenant for such Operating Year, Tenant shall pay the amount of such deficiency within 30 days after demand therefor.

(j) (i) Tenant, upon notice given within 120 days after Tenant's receipt of a Landlord's Statement, may elect to have Tenant's designated (in such notice) representative (who may be an employee of Tenant or a third party accountant or consultant but who may not, in any case, be retained by Tenant on a contingency fee basis or any other fee basis by which such representative's compensation is based upon the amount refunded or credited by Landlord to Tenant as a result of such audit) examine such of Landlord's books and records (collectively, "Records") as are directly relevant to such Landlord's Statement, and Landlord shall provide access to the Records upon reasonable prior notice. As a condition to Tenant's right to review the Records, Tenant shall pay all sums required to be paid in accordance with the Landlord's Statement in question, without prejudice to its position. If Tenant shall not give such notice within such 120-day period, then such Landlord's Statement shall be conclusive and binding upon Tenant. Tenant and Tenant's employees, accountants and agents shall treat all Records as confidential, and, upon request by Landlord, shall confirm such confidentiality obligation in writing by executing a confidentiality agreement in the form attached hereto as Exhibit N.

(ii) Tenant, within 90 days after the date on which the Records are made available to Tenant, may send a notice ("Tenant's Statement") to Landlord that Tenant disagrees with the applicable Landlord's Statement, specifying in reasonable detail the basis for Tenant's disagreement and the amount of the Operating Payment Tenant claims is due. If Tenant fails timely to deliver a Tenant's Statement, then such Landlord's Statement shall be conclusive and binding on Tenant. Landlord and Tenant shall attempt to adjust such disagreement. If they are unable to do so and provided that the amount of the Operating Payment Tenant claims is due is substantially different from the amount of the Operating Payment Landlord claims is due, Tenant shall notify Landlord, within 90 days after the date on which the Records are made available to Tenant in connection with the disagreement in question, that such disagreement shall be determined by an Arbiter in accordance with this Section 2.07(j), and promptly thereafter Landlord and Tenant shall jointly designate a certified public accountant (the "Arbiter") whose determination made in accordance with this Section 2.07(j)(ii) shall be binding upon the parties; it being understood that if the amount of the Operating Payment Tenant claims is due is not substantially different from the amount of the Operating Payment Landlord claims is due, then Tenant shall have no right to protest such amount and shall pay the amount that Landlord claims is due to the extent not theretofore paid. If Tenant timely delivers a Tenant's Statement, the disagreement referenced therein is not resolved by the parties and Tenant fails to notify Landlord of Tenant's desire to have such disagreement determined by an Arbiter within the 90-day period set forth in the preceding sentence, then the Landlord's Statement to which such disagreement relates shall be conclusive and binding on Tenant. If the determination of the Arbiter shall substantially confirm the determination of Landlord, then Tenant shall pay the cost of the Arbiter. If the Arbiter shall substantially confirm the determination of Tenant, then Landlord shall pay the cost of the Arbiter. In all other events, the cost of the Arbiter shall be borne equally by Landlord and Tenant. The Arbiter shall be a member of an independent certified public accounting firm having at least 15 accounting professionals and shall have at least 10 years of experience in real estate accounting matters, and such Arbiter and the accounting firm with whom such Arbiter is affiliated shall be disinterested. If Landlord and Tenant shall be unable to agree upon the designation of the Arbiter within 15 days after receipt of notice from a party requesting agreement as to the designation of the Arbiter, which notice shall contain the names and addresses of two or more certified public accountants meeting the requirements of this Section 2.07(j)(ii) and who are acceptable to the party sending such notice, then either party shall have the right to request JAMS to designate as the Arbiter a certified public accountant meeting the requirements of this Section 2.07(j)(ii) whose determination made in accordance with this Section 2.07(j)(ii) shall be conclusive and binding upon the parties, and the cost of such certified public accountant shall be borne as provided above in the case of the Arbiter designated by Landlord and Tenant. Any determination made by an Arbiter shall not exceed the amount determined to be due in the first instance by Landlord's Statement, nor shall such determination be less than the amount claimed to be due by Tenant in Tenant's Statement, and any determination which does not comply with the foregoing shall be null and void and not binding on the parties. In rendering such determination such Arbiter shall not add to, subtract from or otherwise modify the provisions of this Lease, including the immediately preceding sentence. Pending the resolution of any contest pursuant to this Section 2.07(j)(ii), and as a condition to Tenant's right to prosecute such contest, Tenant shall pay all sums required to be paid in accordance with the Landlord's Statement in question, without prejudice to its position. If Tenant shall prevail in such contest, an appropriate refund shall be made by Landlord to Tenant within 30 days after such determination. The term "substantially" as used in this Section 2.07(j)(ii), shall mean a variance of 2% or more of the Operating Payment in question. If the Arbiter determines that Landlord overstated the actual amount of Operating Expenses for a particular Operating Year by more than five percent (5%) of the actual amount of Operating Expenses for such Operating Year, then in addition to the refund to which Tenant is entitled, Landlord shall reimburse Tenant for (or, at Landlord's option, Landlord shall credit against the Rent thereafter coming due under this Lease) the reasonable out-of-pocket costs actually paid to Tenant's auditor in connection with Tenant's audit of the Records within 30 days after Tenant gives to Landlord reasonable supporting documentation describing such costs.

**2.08 PILOT, Impositions, Tax and Operating Provisions.** (a) In any case provided in Sections 2.04, 2.05, 2.06 or 2.07 in which Tenant is entitled to a refund, Landlord may, in lieu of making such refund, credit against future installments of Rent any amounts to which Tenant shall be entitled. Nothing in this Article 2 shall be construed so as to result in a decrease in the Fixed Rent. If this Lease shall expire before any such credit shall have been fully applied, then (provided Tenant is not in default under this Lease) Landlord shall refund to Tenant the unapplied balance of such credit.

(b) Landlord's failure to render or delay in rendering a Landlord's Statement with respect to any Operating Year or any component of the Operating Payment shall not prejudice Landlord's right to thereafter render a Landlord's Statement with respect to any such Operating Year or any such component; provided, that such Landlord's Statement is delivered within 2 years after the end of the Operating Year in question, nor shall the rendering of a Landlord's Statement for any Operating Year prejudice Landlord's right to thereafter render a corrected Landlord's Statement for such Operating Year within such 2-year period. Landlord's failure to render or delay in rendering any statement with respect to any PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment (or installment thereof) shall not prejudice Landlord's right to thereafter render such a statement; provided, that such statement is delivered within 2 years following the later of (i) the end of the Tax Year in question or (ii) the final determination of the PILOT, Impositions or Taxes, as applicable, for the Tax Year in question, nor shall the rendering of a statement for any PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment (or installment thereof) prejudice Landlord's right to thereafter render a corrected statement therefor within such 2-year period.

(c) Landlord and Tenant confirm that the computations under this Article 2 are intended to constitute a formula for agreed rental escalation and may or may not constitute an actual reimbursement to Landlord for PILOT, Impositions, Taxes and other costs and expenses incurred by Landlord with respect to the Project.

(d) Each PILOT Payment, Additional Tax Payment, Impositions Payment or Tax Payment in respect of a Tax Year, and each Operating Payment in respect of an Operating Year, which ends after the expiration or earlier termination of this Lease, and any PILOT, Impositions or Taxes refund with respect to such a Tax Year, shall be prorated to correspond to that portion of such Tax Year or Operating Year occurring within the Term.

**2.09 Electric Charges.** (a) Tenant's demand for, and consumption of, electricity serving the Premises shall be determined by meters or submeters, the first installation of which shall be at Landlord's expense with respect to one meter or submeter per floor of the Premises and any additional or subsequent installations of which shall be at Tenant's expense, it being understood, however, that in all cases such meters and submeters shall be maintained by Landlord as an Operating Expense. Such meters or submeters shall be capable of providing information regarding both the aggregate KWH of consumption for the Premises and the total coincidental demand for the Premises in KW (treated as if such demand were measured by a single meter), and shall be billed as if there was only one (1) meter in the Premises. Tenant shall pay for electric consumption (" Electricity Additional Rent ") as provided in this Section 2.09 within 30 days after rendition of a bill therefor, which shall be rendered by or on behalf of Landlord and may not be rendered more frequently than once per month.

(b) The Electricity Additional Rent will consist of the following:

(i) The Basic Electric Charge (as hereinafter defined and calculated); plus

(ii) An amount equal to 3% of the Basic Electric Charge for the applicable billing cycle to take into account the deemed line losses (and actual cost of transformer losses, if applicable) between the Building's master meter and Tenant's meters or submeters; it being agreed by the parties that such actual line or transformer losses are not reasonably capable of being accurately measured and the above percentage is a reasonable estimation thereof and not a markup of the Basic Electric Charge.

(c) “ Basic Electric Charge ” means, for each billing cycle, the amount (as adjusted from time to time, “ Landlord’s Rate ”) that Landlord is charged from time to time for the purchase of each KW and KWH of electricity for the Building for the same period by the vendor (the “ Electricity Provider ”) from which Landlord is then purchasing electricity for the Building (including all surcharges, taxes, fuel adjustments, market supply and market adjustment charges, taxes passed on to consumers by the public utility, and other sums payable in respect thereof), plus all surcharges, taxes, and other sums payable in respect of Landlord’s sale of electricity to Tenant. Landlord’s Rate shall be determined by applying KW and KWH (on-peak and off-peak, if applicable) as derived from Tenant’s meters or submeters to the same rates charged by the Electricity Provider during each respective service period. Electricity shall be billed as if there was only one (1) meter in the Premises. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to apply Tenant’s interval data to Landlord’s Rate to determine the amount payable by Tenant hereunder.

(d) Notwithstanding anything to the contrary contained in this Lease, the DX units serving the Premises shall be connected to submeters measuring Tenant’s use of electricity in the Premises and Tenant shall pay all electricity costs in connection with the use of such equipment in accordance with this Section 2.09.

**2.10 Manner of Payment.** Tenant shall pay all Rent as the same shall become due and payable under this Lease (a) in the case of Fixed Rent and Recurring Additional Charges, by wire transfer of immediately available federal funds as directed in writing by Landlord, and (b) in the case of all other sums, either by wire transfer as aforesaid or by check (subject to collection) drawn on a bank that clears through The Clearing House Payments Company L.L.C., in each case at the times provided herein without notice or demand and without setoff or counterclaim. All Rent shall be paid in lawful money of the United States to Landlord at its office or such other place as Landlord may from time to time designate in writing. If Tenant fails timely to pay any Rent, Tenant shall pay interest thereon from the date when such Rent became due to the date of Landlord’s receipt thereof at the Interest Rate. If Tenant fails to timely pay any installment of Fixed Rent or Recurring Additional Rent on 2 occasions within any rolling 365-day period, in addition to all other rights and remedies Landlord may have under this Lease and the payment of interest as provided in the immediately preceding sentence, Tenant shall pay to Landlord, as Additional Charges, together with such 2<sup>nd</sup> late payment of Fixed Rent or Recurring Additional Rent (and any subsequent late payment of Fixed Rent or Recurring Additional Rent within any such 365-day period), a fee in the amount of 2% of the amount of the late Fixed Rent or Recurring Additional Rent payment in order to defray Landlord’s costs in connection with Tenant’s late payment of Fixed Rent or Recurring Additional Rent. Tenant shall pay interest on such fee at the Interest Rate from the date the applicable late payment of Fixed Rent or Recurring Additional Rent was due until the date of Landlord’s receipt of such fee. Any Additional Charges for which no due date is specified in this Lease shall be due and payable on the 30th day after the date of invoice. Subject to the foregoing, whenever this Lease shall provide that Landlord or Tenant shall pay the out-of-pocket costs of the other party, the party seeking reimbursement of such out-of-pocket costs shall deliver to the requesting party bills, receipts, invoices or other reasonable supporting documentation reasonably evidencing such costs and, except to the extent such costs are incurred by Landlord following a default hereunder by Tenant or otherwise at the request of Tenant (e.g., if Tenant requests that Landlord reasonably cooperate with Tenant in connection with an amendment to the certificate of occupancy in accordance with Section 1.04(c)), such out-of-pocket costs shall be commercially reasonable.

**2.11 Security.** (a) Within 30 days of the date of this Lease, Tenant shall deliver to Landlord, as security for the performance of Tenant's obligations under this Lease, an unconditional, irrevocable letter of credit (the "Letter of Credit") in the amount of \$8,698,662 (the "Required Letter of Credit Amount") in the form of Exhibit O attached hereto and issued by Citibank, N.A., permitting multiple and partial draws thereon. The Letter of Credit shall provide that it is assignable by Landlord without charge and shall either (x) expire on the date which is 60 days after the expiration or earlier termination of this Lease (the "LC Date") or (y) be automatically self-renewing until the LC Date. Tenant shall be responsible for paying the issuer's assignment, transfer and processing fees in connection with the first assignment or transfer of the Letter of Credit during the Term and, if Landlord advances any such fees (without having any obligation to do so) in connection with the first such assignment or transfer, Tenant shall reimburse Landlord for any such transfer or processing fees in connection with the first such assignment within 30 days after Landlord's written request therefor. If any Letter of Credit is not renewed at least 30 days prior to the expiration thereof or if Tenant holds over in the Premises without the consent of Landlord after the expiration or termination of this Lease, Landlord may draw upon the Letter of Credit and hold the proceeds thereof as security for the performance of Tenant's obligations under this Lease. Landlord may draw on the Letter of Credit (or the proceeds thereof) to remedy defaults by Tenant beyond applicable notice and cure periods in the payment or performance of any of Tenant's obligations under this Lease. If Landlord shall have so drawn upon the Letter of Credit (or the proceeds thereof), Tenant shall promptly upon demand deliver to Landlord a replacement Letter of Credit or an amendment to the Letter of Credit such that the Letter of Credit shall be in the amount of the Required Letter of Credit Amount, as such Required Letter of Credit Amount may be decreased pursuant to clause (c) below.

(b) Provided Tenant is not in default under this Lease and Tenant has surrendered the Premises to Landlord substantially in accordance with all of the terms and conditions of this Lease, within 5 Business Days after the LC Date: (i) Landlord shall return to Tenant the Letter of Credit (or the proceeds thereof) then held by Landlord or (ii) if Landlord shall have drawn upon such Letter of Credit (or the proceeds thereof) to remedy defaults by Tenant in the payment or performance of any of Tenant's obligations under this Lease, Landlord shall return to Tenant that portion, if any, of the proceeds of the Letter of Credit remaining in Landlord's possession.

(c) Provided that on the applicable Reduction Date (i) Tenant is not then in default under this Lease and (ii) Tenant has not been in default under this Lease beyond applicable notice and cure periods, (1) Tenant shall be entitled to a reduction in the amount of the Letter of Credit of \$724,888.50 (the "Initial Reduction Amount") on the 3rd anniversary of the Rent Commencement Date (the "First Reduction Date"), (2) Tenant shall be entitled to a further reduction in the amount of the Letter of Credit by the Initial Reduction Amount on the 5th anniversary of the Rent Commencement Date (the "Second Reduction Date"), (3) Tenant shall be entitled to a further reduction in the amount of the Letter of Credit by the Initial Reduction Amount on the 7th anniversary of the Rent Commencement Date (the "Third Reduction Date"), (4) Tenant shall be entitled to a further reduction in the amount of the Letter of Credit by the Initial Reduction Amount on the 9th anniversary of the Rent Commencement Date (the "Fourth Reduction Date") and (5) Tenant shall be entitled to a further reduction in the amount of the Letter of Credit of \$1,449,777.00 (the "Future Reduction Amount"; each of the Initial Reduction Amount and the Future Reduction Amount being referred to herein as a "Reduction Amount") on the 11th anniversary of the Rent Commencement Date (the "Fifth Reduction Date"; each of the First Reduction Date, the Second Reduction Date, the Third Reduction Date, the Fourth Reduction Date and the Fifth Reduction Date being referred to herein as a "Reduction Date"). In no event shall the Letter of Credit be reduced to less than \$4,349,331.00. On or after each Reduction Date, Tenant shall deliver to Landlord an amendment to the Letter of Credit (the form and substance of such amendment to be reasonably satisfactory to Landlord), reducing the amount of the Letter of Credit by the applicable Reduction Amount, and Landlord shall execute the amendment and such other documents as are reasonably necessary to reduce the amount of the Letter of Credit in accordance with the terms hereof. Notwithstanding anything to the contrary contained in this clause (c), if Tenant is in default under this Lease prior to the expiration of any applicable notice and cure period on a Reduction Date and thereafter Tenant fully cures such default and any other defaults prior to the expiration of any such applicable notice and cure period, then Tenant shall be entitled to such reduction in the amount of the Letter of Credit in the applicable Reduction Amount on such later date, provided that all other conditions to the reduction in the amount of the Letter of Credit set forth in this clause (c) are satisfied on such later date.

### **ARTICLE 3**

#### **Landlord Covenants**

**3.01** **Landlord Services**. From and after the date that Tenant first occupies the Premises for the conduct of Tenant's business, Landlord shall furnish Tenant with the following services (collectively, "Landlord Services"):

(a) heat, ventilation and air-conditioning to the Premises during Business Hours substantially in accordance with the design specifications set forth in Exhibit F attached hereto; if Tenant shall require heat, ventilation or air conditioning at any other times, Landlord shall furnish such service (i) in the case of a Business Day, upon receiving notice from Tenant by 1:00 p.m. of such Business Day and (ii) in the case of a day other than a Business Day, upon receiving notice from Tenant by 5:00 p.m. of the immediately preceding Business Day, and Tenant shall pay to Landlord within 30 days after demand Landlord's then established charges therefor, which charges shall be calculated in accordance with Exhibit H attached hereto and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such services; provided, that Tenant shall be subject to a 4 hour minimum charge for any such overtime service unless such overtime service is requested for a period of time immediately preceding or immediately following Business Hours on a Business Day, in which case Tenant shall be entitled to request a minimum of 1 full hour of such overtime service;

(b) (i) subject to service changes due to emergency and necessary maintenance, for Tenant's non-exclusive use and benefit, destination dispatch passenger elevators serving floors 18 through 30 of the Building (the "Elevators") in accordance with the specifications attached hereto as Exhibit G at all times during Business Hours on Business Days, with at least 2 Elevators subject to call at all other times. Except for purposes of maintenance, repairs and any reason beyond Landlord's reasonable control, Landlord shall not remove any Elevators serving the Premises from service during Business Hours on Business Days;

(ii) subject to the Rules and Regulations, freight elevator and loading dock service to the Premises for Tenant's non-exclusive use and benefit on a "first-come, first-served" basis (without affording any other tenant more favorable availability than that which is afforded to Tenant); provided, that with respect to such service other than during Business Hours on Business Days, (A) Tenant shall pay to Landlord within 30 days after demand Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto and shall be Subject to CPI Increases and (B) Tenant shall be subject to a 4 hour minimum charge unless such overtime service is requested for a period of time immediately preceding or immediately following Business Hours on a Business Day, in which case Tenant shall be entitled to request a minimum of 1 full hour of such overtime service. Notwithstanding the foregoing, during the performance of Tenant's Initial Work and Tenant's initial move-in to the Premises, (1) Tenant shall be entitled to up to 80 overtime hours in the aggregate of freight elevator and loading dock service at no charge and (2) the charges for Tenant's use of freight elevator and loading dock service shall be as more particularly described in Section 4.01(c)(v);

(c) reasonable quantities of hot and cold water to the floor(s) on which the Premises are located for core lavatory, cleaning, drinking and cold water for pantry (other than dishwashers and subject to Section 8.20(b)(v), it being agreed that the heating of water supplied to the pantry, together with the cost thereof, including electricity, shall be the sole responsibility of Tenant) purposes only; if Tenant requires additional water for any other purpose, Landlord shall furnish cold water at the Building core riser through a capped outlet located on each floor on which the Premises is located (within the core of the Building), and the cost of heating such water (including, without limitation, the cost of electric to heat such water) and the cost of piping and supplying such water to the Premises shall be paid by Tenant (provided that Landlord shall install and maintain hot water heaters for the core toilet rooms and janitors closets); Landlord may install and maintain, at Tenant's expense, meters to measure Tenant's consumption of such additional water in which event Tenant shall reimburse Landlord for the quantities of water shown on such meters, within 30 days after demand accompanied by reasonable supporting documentation, at Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such water;

(d) electric energy on a submetered basis through the transmission facilities installed by Landlord in the Building for Tenant's reasonable use of lighting and other electrical fixtures, appliances and equipment at a level of not less than 5 watts demand load per gross square foot of space (exclusive of electricity required to operate the base building systems installed by Landlord, including, without limitation, the Building HVAC system, but inclusive of any Tenant installed portion of the HVAC distribution system such as fan powered boxes); in no event shall Tenant's consumption of electricity exceed the capacity of existing feeders to the Building or the risers or wiring serving the Premises, nor shall Tenant be entitled to any unallocated power available in the Building except that Landlord agrees to provide Tenant with at least an additional 2 watts demand load per gross square foot if, in Landlord's reasonable judgment (i) Tenant has demonstrated the need for such additional electrical power by providing a load letter provided by an electrical engineer reasonably approved by Landlord certifying that Tenant requires such additional electrical capacity and (ii) taking into account the then existing and future needs of other then existing and future tenants, and other needs of the Building, the same is available for Tenant's use, and if Landlord shall provide such additional power, Tenant shall pay to Landlord, within 30 days after demand, Landlord's costs incurred in providing such additional power to the Premises and the cost of installing additional risers, meters, switches and related equipment necessary to provide such additional power. To the extent there is insufficient electrical power available in the Building to meet Tenant's needs for additional electrical power in excess of 5 watts demand load per gross square foot and such additional 2 watts demand load per gross square foot as demonstrated in accordance with the immediately preceding sentence, Landlord, at Tenant's expense, shall use commercially reasonable efforts to obtain additional electrical power (provided the same would not result in the diminution of electrical capacity, or any other adverse effect upon the Building or the electrical capacity and electrical cost for the balance of the Building). Any riser or risers necessary to supply Tenant's electrical requirements in excess of 5 watts demand load per gross square foot of space and such additional 2 watts demand load per gross square foot as demonstrated herein (exclusive of electricity for the Building HVAC system) shall be installed by Landlord at the sole cost and expense of Tenant and only if, in Landlord's reasonable judgment, the same is reasonably practicable and will not cause adverse damage or injury to the Building or the operation thereof or the Premises, or cause or create a dangerous or hazardous condition. In addition to the installation of such riser or risers, Landlord shall also, at the sole cost and expense of Tenant, install all other equipment proper and necessary in connection therewith, subject to the aforesaid terms and conditions. All of such costs and expense shall be paid by Tenant to Landlord within 30 days after rendition of any bill or statement to Tenant therefor accompanied by appropriate invoices and other reasonable evidence of the costs incurred. Subject to Laws and Landlord's approval of Tenant's plans therefor, Tenant shall have the right to redistribute the electric power furnished on each floor of the Premises by Landlord throughout the Premises; provided, that (1) such redistribution does not cause Tenant's consumption of electricity to exceed the capacity of the feeders, risers or wiring serving the Premises, (2) Tenant, at Tenant's sole expense, shall perform any work required prior to the expiration or earlier termination of the Term so that the electrical capacity stated in this Section 3.01(d) is restored to each floor of the Premises and (3) if Tenant shall surrender any portion of the Premises prior to surrendering the entire Premises, Tenant, at Tenant's sole expense, shall perform any work required prior to such partial surrender so that the electrical capacity stated in this Section 3.01(d) is restored to the surrendered portion of the Premises;

(e) cleaning services for the Premises in accordance with the specifications provided in Exhibit D attached hereto. Tenant shall pay to Landlord within 30 days after demand the out-of-pocket costs incurred by Landlord for (i) extra cleaning work in the Premises required because of (A) carelessness, indifference, misuse or neglect on the part of Tenant, its subtenants or their respective employees or visitors, (B) interior glass partitions or an unusual quantity of interior glass surfaces (i.e., any cleaning in excess of spot cleaning of glass in the Premises within arms-length reach), (C) non-standard materials or finishes installed in the Premises and/or (D) the use of the Premises other than during Business Hours on Business Days, and (ii) removal from the Premises and the Building of any refuse of Tenant in excess of that ordinarily accumulated in business office occupancy, including, without limitation, kitchen and pantry refuse, or at times other than Landlord's standard cleaning times, provided that such extra out-of-pocket costs are at commercially competitive rates charged to landlords of comparable First Class Office Buildings. Notwithstanding the foregoing, Landlord shall not be required to clean any portions of the Premises used for preparation, serving or consumption of food or beverages, training rooms, trading floors, data processing or reproducing operations, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas and Tenant shall retain Landlord's cleaning contractor at Tenant's expense to perform such cleaning and any other cleaning services in excess of those provided for in Exhibit D, provided such cleaning contractor charges rates that are reasonably competitive with rates charged by other cleaning contractors providing similar services to First Class Office Buildings. Notwithstanding the foregoing, Tenant may use its own employees to provide minor cleaning services to pantries and conference rooms within the Premises; provided, that (A) the provisions of Section 4.02(e) relating to the avoidance of union-related conflict shall apply to such minor cleaning services, (B) Landlord shall have no liability to Tenant or Tenant's employees in connection with such minor cleaning services and (C) any such minor cleaning services shall be subject to such reasonable rules and regulations that may be established by Landlord with respect thereto (including, without limitation, Landlord's green cleaning policy for the Building). Landlord's cleaning contractor shall have access to the Premises after 6:00 p.m. and before 8:00 a.m. and shall have the right to use, without charge therefor, all light, power and water in the Premises reasonably required to clean the Premises;

(f) 30 tons of condenser water for the Premises (i.e., 10 tons per full floor of the Premises) for Tenant's supplemental HVAC system from the common cooling tower unit serving the Building 24 hours a day, 7 days a week (the "Reserved Tonnage"). Tenant shall have the right to use the Reserved Tonnage throughout the Term. Tenant shall not be entitled to any additional condenser water; provided, that Tenant shall be entitled to increase (but not decrease) the Reserved Tonnage by up to 10 tons of condenser water for the Premises (i.e., to 40 tons total) if on or before June 1, 2017 Tenant has demonstrated the need for such additional condenser water by providing a load letter provided by an engineer reasonably approved by Landlord certifying that Tenant requires such additional condenser water and delivered a notice to Landlord specifying the amount of such additional condenser water so requested by Tenant (not to exceed an additional 10 tons of condenser water). Tenant shall perform all necessary work and install all required equipment to permit Tenant to tap into Landlord's condenser water riser (provided that Landlord shall provide capped valved outlets as set forth on Exhibit S), and Landlord shall waive any tap-in fee or "drain-down" charge for Tenant's tap into Landlord's condenser water riser. Tenant shall pay to Landlord, within 30 days after demand, for such reservation of condenser water, an amount equal Landlord's then established charges therefor, which charges as of the date hereof are \$750 per ton reserved per annum and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such condenser water. Subject to Laws and Landlord's approval of Tenant's plans therefor, Tenant shall have the right, at Tenant sole cost and expense, to redistribute the condenser water furnished on each floor of the Premises throughout the Premises (it being agreed that condenser water is being allocated on the basis of 10 tons of condenser water per floor); provided, that if Tenant shall surrender the Premises (or any portion of the Premises prior to surrendering the entire Premises), Tenant shall perform any work required prior to such surrender (or such partial surrender) so that the condenser water capacity stated in this Section 3.01(f) is restored to the Premises (or the surrendered portion of the Premises);

(g) (i) security in accordance with Exhibit L attached hereto; provided, that, except to the extent due to Landlord's negligence or willful misconduct, Landlord shall have no responsibility to prevent, and Landlord shall have no liability to Tenant (or anyone claiming through or under Tenant) for loss to Tenant (or such other person) or their agents, contractors, employees, invitees, or licensees, arising out of theft, burglary or damage or injury to persons or property caused by persons gaining access to the Building or other causes;

(ii) Tenant shall have the right, at Tenant's sole cost and expense, to install a security system (which may be, at Tenant's option, a key-card access system) in the Premises; provided that Tenant shall provide Landlord's security personnel with any key-cards, information or other items required to access the Premises in accordance with the provisions of Section 4.04(d). If Tenant desires to install a security system in the Premises that is compatible with the Building security system so as to enable individuals to utilize a single security/access card to access both the ground floor elevator lobby serving the Premises and the Premises, Landlord shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, with respect to Tenant's installation and maintenance of such compatible security system;

(iii) Landlord shall provide access cards for entry to the ground floor elevator lobby serving the Premises and Tenant shall pay to Landlord, within 30 days after demand therefor, Landlord's established charges therefor. Notwithstanding the foregoing, Landlord shall provide, without charge, 1 such access card for each employee of Tenant with a place of work in the Premises as of the date that Tenant first occupies the Premises for the conduct of Tenant's business;

(h) Landlord shall operate (or cause an outside contractor to operate) a messenger center for the Building (the "Messenger Center"). The service to be provided by the Messenger Center from time to time, the manner in which such services are provided from time to time and hours of operation observed from time to time (the "Messenger Center Services") shall comply with all applicable Laws and shall be reasonably formulated by Landlord with a view toward the security protocols for the Building. Tenant shall, throughout the Term, use, in common with Landlord and other tenants and occupants of the Building, the Messenger Center and the Messenger Center Services. Landlord shall have the right, from time to time, to make such modifications to the Messenger Center Services as it deems reasonably necessary, taking into account requirements of applicable Laws and the security of the Building and its tenants and other occupants. Landlord reserves the right to reconfigure or relocate the Messenger Center. Landlord shall have no liability to Tenant for accepting or failing to accept or for providing or not providing or for requesting or failing to request receipts or evidence of delivery for any mail or packages or for the handling of, or damage to, such mail or packages absent the gross negligence or willful misconduct of Landlord. The cost of maintaining the Messenger Center and Messenger Center Services shall be an Operating Expense under this Lease;

(i) (i) Tenant shall have the non-exclusive right to use the portion of one of the Building's core fire staircases (such core fire staircase to be designated by Landlord after consultation with Tenant) connecting contiguous floors of the Premises (such portion of the Landlord-designated core fire staircase connecting contiguous floors of the Premises, the "Internal Stairs") solely as convenience stairs in accessing each floor; provided, that Tenant, at its sole cost and expense, complies with all applicable Laws in connection with such use. In using the Internal Stairs and in preparing said Internal Stairs for use by Tenant, Tenant shall be responsible for all incremental costs and expenses in connection therewith (including any increase in Landlord's insurance costs resulting from Tenant's use thereof and any additional costs to Landlord resulting from the need to install, maintain and provide electricity to continuous lighting fixtures serving the Internal Stairs) and shall comply with the terms of this Lease, all Rules and Regulations, all applicable Laws and insurance requirements applicable to the Building. If Tenant so utilizes the Internal Stairs as convenience stairs, then, unless Landlord directs Tenant otherwise, Tenant shall maintain at its sole cost and expense the Internal Stairs, including, without limitation, the periodic painting and cleaning thereof in a manner appropriate for a First Class Office Building. Tenant shall not use any shared fire stairs so as to interfere with the rights of other tenants or occupants in the Building;

(ii) Tenant shall have the right to make reasonable code-compliant decorative alterations to the Internal Stairs (such as painting, lighting and handrails), provided that Tenant obtains Landlord's prior written consent thereto (which shall be granted or withheld in Landlord's reasonable discretion so long as (A) said decorative alterations do not violate any Laws and/or insurance requirements with respect to the Building, (B) said decorative alterations do not increase Landlord's insurance costs (unless Tenant reimburses Landlord for the incremental amount of such increased insurance costs), (C) said decorative alterations do not reduce light output in the Internal Stairs below the level required to properly charge the photoluminescent tape therein (and in no event shall such light output be reduced below 1FC) and (D) in no event shall Tenant be permitted to paint over or cover up reflective glow tape in the Internal Stairs, if any.

(iii) In connection with any use of the Internal Stairs and subject to the terms of Article 4 hereof, Tenant, at Tenant's sole cost and expense shall (A) subject to applicable re-entry rules and regulations from time to time in effect, install and regularly maintain a security and control system with key-card access at the core doors between the Internal Stairs and the Premises that is satisfactory to Landlord in its reasonable discretion (including, without limitation, the installation of additional fire safety equipment and video and other surveillance equipment), (B) provide Landlord with at least 3 key cards to any such security system and update such key cards, at no cost or expense to Landlord, from time to time, if such update is necessary in order to permit such key cards to be operable, and (C) tie such system into the Building's security and Class E fire safety systems, the Building management system and such other systems as Landlord may reasonably require. Tenant acknowledges that any alterations required to tie such security system into the fire safety system of the Building shall be performed by Landlord's designated fire safety contractor for the Building (at said fire safety contractor's then standard charges therefor, which charges shall be at commercially competitive rates for similar services then being provided in other First Class Office Buildings), at Tenant's sole cost and expense. If Tenant installs any manual lock(s) between the Internal Stairs and the Premises, such manual lock(s) shall have a base building lockset which is keyed to the Building's stair master key and sub-mastered to Tenant's key, or, at Tenant's request, keyed alike;

(iv) In no event shall Tenant be permitted to store any equipment, furniture, storage boxes or any other personal property whatsoever in the Internal Stairs; and

(v) Tenant acknowledges that Landlord has made no representation or warranty as to whether Tenant's use of the stairwell area as contemplated hereunder is permitted under applicable Laws and/or insurance requirements. In the event that Tenant is not permitted to use the stairwell area for any reason whatsoever Landlord shall not have liability to Tenant therefor. Further, Landlord shall have no liability to Tenant relating to Tenant's use of the stairwell area as contemplated hereunder and Tenant acknowledges and agrees that Tenant shall use the stairwell area in accordance with this Section 3.01(i) at its sole risk. Tenant shall be solely responsible for the operation of the locking system on the doors from the Internal Stairs to the Premises and hereby waives any and all claims against Landlord arising out of or in connection with parties gaining access to and from the Premises through the Internal Stairs, except to the extent any such claims arise as a direct result of Landlord's gross negligence or willful misconduct. All of the provisions of this Lease in respect of indemnification shall apply to the Internal Stairs, as if the same were part of the Premises, if and to the extent any such indemnification obligation arises from the use or misuse or maintenance of or alterations to the Internal Stairs by Tenant or any Tenant Indemnified Party or anyone claiming by, through or under Tenant;

(j) subject to Landlord's security procedures and the provisions of this Lease, access to the Premises 24 hours per day, 7 days per week except in cases of emergency;

(k) operation, maintenance and repair of the public and common areas of the Building and of the systems and equipment serving the Building, and the provision of services required hereunder, in a manner consistent with standards maintained in First Class Office Buildings (it being understood that any specifications for the provision of services required hereunder included in this Lease or the exhibits attached hereto shall be deemed to meet such standards); provided, that Landlord's obligations under this Section 3.01(k) shall be limited to areas of, and systems and equipment within, the Building which Tenant is entitled to use or which otherwise serve the Premises and Landlord shall have no liability to Tenant for any failure to maintain such standards except to the extent such failure adversely affects Tenant's use and enjoyment of the Premises;

(l) emergency power through the emergency generator(s) for the Building sufficient to make operational all base building systems serving the Premises which are required by applicable Laws to be operational for emergency power, including exit lights and egress illumination, fire pumps, smoke exhaust systems, stair pressurization and the fire alarm system;

(m) water pressure and reserve capacity to the fire sprinkler system serving the Premises at the levels required pursuant to the Building Code for the City of New York;

(n) a fire alarm and life safety system as more particularly shown on Exhibit Y, including a “DGP” on at least one floor of the Premises initially demised hereunder (or such redesignated floors in accordance with Section 1.01(b), if applicable) for Tenant’s connections to such life safety system; and

(o) Landlord shall make available to the Premises from a generator installed by Landlord for the use of Building tenants (“Standby Power System”) 100 KW of standby power demand load (the “Allocated Generator Capacity”). Landlord shall make available to Tenant throughout the Term the Allocated Generator Capacity. The Standby Power System and related equipment and the Allocated Generator Capacity shall be supplied by Landlord upon and subject to the following conditions:

(i) Tenant shall, at its sole cost and expense and subject to the applicable provisions of this Section 3.01(o), perform any work necessary to connect the Premises to the Allocated Generator Capacity and any other work necessary to distribute power and make the Allocated Generator Capacity usable for Tenant’s purposes, all of which work shall be deemed an Alteration for all purposes under this Lease and shall only be performed upon reasonable prior notice to Landlord and under the supervision of the appropriate operations personnel of Landlord (who shall be made available to Tenant at reasonable times upon reasonable advance notice from Tenant). In connection with such supervision, Tenant shall pay to Landlord, within 30 days after demand therefor, Landlord’s established charges for the time of such operations personnel, which charges as of the Effective Date are set forth on Exhibit H and shall be increased from time to time to the extent of Landlord’s actual increase in cost for the time of such operations personnel; provided, that Tenant shall be subject to a 4 hour minimum charge for such operations personnel unless supervision by such operations personnel occurs during, immediately preceding or immediately following Business Hours on a Business Day, in which case Tenant shall only be subject to charge in 1 hour increments for such supervision;

(ii) Tenant shall pay, as Additional Charges, an amount equal to Landlord’s then established charges per KW per annum of Allocated Generator Capacity (which charges as of the date hereof are \$500.00 per KW of Allocated Generator Capacity per annum, and which charge shall be increased from time to time only to the extent necessary to reflect Landlord’s actual increases in Landlord’s incremental cost of testing, repairing and maintaining the Standby Power System from such cost as of the date of this Lease), which amount shall be payable within 30 days after rendition of a bill therefor, accompanied by reasonable supporting documentation evidencing such cost. Landlord shall waive any tap-in fee for Tenant’s tap into the Standby Power System;

(iii) Upon such connection of the Premises to the Standby Power System, Tenant shall be responsible for the payment of Tenant’s pro rata share (based on the number of KW of Allocated Generator Capacity relative to the total number of KW of standby power available from the Standby Power System) of any and all costs in connection with (A) the purchase of fuel in connection with the Standby Power System, and Landlord shall maintain sufficient fuel to run the Standby Power System at full load for 48 hours and (B) the testing, repair and maintenance of the Standby Power System, which payment shall be made by Tenant, as Additional Charges, within 30 days after rendition of a bill therefor.

(iv) Landlord shall be responsible for the maintenance, repair and testing of the Standby Power System, which shall be performed in a manner consistent with industry standards for similar systems and in compliance with manufacturer maintenance and service requirements. If, due to a cause beyond the reasonable control of Landlord, the Standby Power System fails to provide sufficient standby power for Landlord to provide the amounts of standby power reserved from the Standby Power System by Tenant and other occupants of the Building, then, to the extent reasonably practicable given the effects of the circumstances limiting the performance of the Standby Power System and subject to the terms of other leases in the Building, Landlord will allocate such standby power as Landlord is able to provide from the Standby Power System to occupants of the Building on a pro rata basis to each of such occupants then reserving standby power from the Standby Power System (determined based on the respective rentable square footages of the space in the Building occupied by each of such occupants).

(v) The Standby Power System will be available to Tenant in an "AS IS" "WHERE IS" condition without representation or warranty by Landlord; Tenant hereby acknowledges that its right to use the Standby Power System providing the Allocated Generator Capacity hereunder is permitted solely as an accommodation to Tenant and nothing contained herein shall obligate Landlord to replace the Standby Power System or any component thereof, including, without limitation, any component providing the Allocated Generator Capacity, at any time during the Term; provided, that Landlord shall make any replacements necessary to the generator which are components of the Standby Power System.

(vi) Tenant hereby acknowledges that Landlord has made no, and shall not be deemed to have made any, representations or warranties regarding the Standby Power System or the use thereof, whether expressed or implied, by operation of law or otherwise (including, without limitation, warranties of merchantability or fitness for a particular purpose);

(vii) Notwithstanding any provision to the contrary contained in this Lease (including, without limitation, Section 3.01(o)(iv)), Landlord shall have no liability to Tenant for any loss, damage, claim, cost or expense which Tenant may sustain or incur by reason of any change, failure, inadequacy or defect in the supply or character of the fuel furnished to the Standby Power System or in the operation and maintenance of the Standby Power System or if the quantity or character of the fuel is no longer available or suitable for Tenant's requirements; further, Landlord shall have no liability whatsoever to Tenant for any loss, damage, claim, cost or expense which Tenant may sustain or incur by reason of (A) Tenant's use of the Standby Power System providing the Allocated Generator Capacity, (B) any failure of the Standby Power System, or any related equipment, including without limitation any fuel pumps, to operate, (C) an overload condition that causes the Standby Power System to shed Tenant's load or to go into a load shedding operation or (D) any defect(s), latent or otherwise, which may exist on, prior or subsequent to the date hereof with respect to the Standby Power System; and without limiting the generality of the foregoing, Tenant agrees that its use of and access to the Standby Power System shall be at Tenant's sole risk; and

(viii) The rights granted to Tenant to use the Allocated Generator Capacity hereunder are given in connection with, and as part of the rights created under, this Lease and are not separately transferable or assignable (except in connection with a permitted assignment of this Lease to an Intercept Tenant or other permitted assignee of Tenant), and the rights granted to Tenant under this Section 3.01(o) shall terminate upon the expiration or sooner termination of this Lease.

**3.02 General Service Provisions.** (a) Subject to the provisions hereinafter set forth, Landlord may stop or interrupt any Landlord Service, electricity, or other service and may stop or interrupt the use of any facilities and systems at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations or improvements or the performance of maintenance, or inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, or by reason of any other cause beyond the reasonable control of Landlord. Landlord may modify the delivery and scope of any services if required by reason of any Laws. Landlord shall have no liability to Tenant by reason of any stoppage, interruption or modification of any Landlord Service, electricity or other service or the use of any facilities and systems for any reason except as otherwise expressly provided in Section 3.02(d). Landlord shall use reasonable diligence (which shall not include incurring overtime charges) to make such repairs as may be required to machinery or equipment within Landlord's control to provide restoration of any Landlord Service and, where the cessation or interruption of such Landlord Service has occurred due to circumstances or conditions beyond Landlord's control, to cause the same to be restored by diligent application or request to the provider; provided, however, that Landlord, at its expense (subject to reimbursement through Operating Expenses in accordance with the terms of this Lease, so that, for example, if same is a capital expenditure, it shall be amortized in accordance with the terms of Section 2.07(d)), shall employ contractors or labor at overtime rates if necessary to remedy any condition that either (i) results in a denial of reasonable access to the Premises or (ii) is required to respond to an emergency involving imminent threat to life or property. In all other cases, at Tenant's written request, Landlord shall employ contractors or labor at overtime rates and incur any other overtime costs or expenses in making any repairs, alterations, additions or improvements, provided Tenant shall pay to Landlord, as Additional Charges, within 30 days after demand, an amount equal to the excess of (a) the overtime rates, including all fringe benefits and other elements of such pay rates, over (b) the regular pay rates for such labor, including all fringe benefits and other elements of such pay rates. Notwithstanding the foregoing, any such work that unreasonably and materially interferes with Tenant's business operations in the Premises and that would customarily be performed after Business Hours or on non-Business Days by landlords of First Class Office Buildings shall be performed after Business Hours or on non-Business Days at no cost to Tenant (subject to reimbursement through Operating Expenses in accordance with the terms of this Lease). In making any repairs, alterations, additions or improvements, Landlord shall use commercially reasonable efforts to cause its contractors or labor to cover and secure such repair areas and equipment in such a manner to minimize interference with Tenant's business operations during Business Hours. If more than one occupant of the Building, including Tenant, is chargeable by Landlord for the same overtime costs and expenses relating to the same work for which Tenant is chargeable, then Tenant shall only be charged for a proportionate share of such overtime costs and expenses, which apportionment shall be based on the amount of overtime work requested by such parties.

(b) Without limiting any of Landlord's other rights and remedies, if Tenant shall be in default beyond any applicable notice and grace period, Landlord shall not be obligated to furnish to the Premises any service outside of Business Hours on Business Days, and Landlord shall have no liability to Tenant by reason of any failure to provide, or discontinuance of, any such service; provided, that if Tenant shall tender full payment in advance, by certified or bank check or by wire transfer of immediately available funds, for any such service, then Landlord shall furnish such service to the Premises in accordance with the provisions of this Article 3.

(c) "Business Hours" means 8:00 a.m. to 6:00 p.m. on Business Days and 9:00 a.m. to 1:00 p.m. on Saturdays. "Business Days" means all days except (a) Saturdays, (b) Sundays and (c) Holidays. "Holidays" means New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving, Christmas and any other days which are either (i) observed by both the federal and the state governments as legal holidays or (ii) designated as a holiday by the Building Service Union Employee Service contract.

(d) If without the fault or neglect of Tenant or any person claiming through or under Tenant, any Substantial Portion of the Premises is rendered Untenantable for a period of 5 consecutive Business Days after Tenant shall have notified Landlord of such Untenantability, by reason of any stoppage or interruption of any Landlord Service due to a default by Landlord in the performance of any obligation of Landlord pursuant to the provisions of this Lease, then, as Tenant's sole and exclusive remedy, for the period commencing on the 6<sup>th</sup> Business Day after Tenant's giving notice to Landlord that such Substantial Portion of the Premises is so Untenantable until such Substantial Portion of the Premises is no longer Untenantable for such reason, Fixed Rent and Additional Charges shall be appropriately abated with respect only to such Substantial Portion. "Untenantable" means that Tenant shall be unable to use the Premises or the applicable portion thereof for general, administrative or executive office uses (including due to lack of access through the elevators serving the Premises), and shall not be using the Premises for any use. "Substantial Portion" shall mean any portion of the Premises consisting of 10,000 or more contiguous rentable square feet.

(e) No normally operating equipment installed by Landlord shall generate an ambient noise level in excess of NC-35 within the Premises (except within 10'-0" of any fan rooms or other mechanical equipment room in the Premises where it will not exceed NC-40); provided that Landlord shall have no responsibility for noise resulting from Tenant's Alterations, installations or equipment.

**3.03 Landlord's Contribution**. (a) Landlord shall reimburse Tenant (or, at Tenant's request, pay directly to Tenant's general contractor or construction manager) for costs incurred by Tenant for Tenant's Initial Work performed within 3 years after the Possession Date (the "Work Reimbursement Period") up to an amount (the "Work Allowance") equal to \$75.00 per rentable square foot of the Premises initially demised under this Lease, upon the following terms and conditions:

(A) The cost of Tenant's Initial Work (as reasonably estimated by a licensed general contractor selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed) shall be paid by Landlord and Tenant pro rata based on the proportion that the amount of the Work Allowance bears to the total cost of Tenant's Initial Work as so estimated by such general contractor (e.g., if the amount of the Work Allowance is 30% of the estimate of the total cost of Tenant's Initial Work, then, subject to the other requirements of this Section 3.03, Landlord shall be required to disburse 30% of the total cost of any portion of Tenant's Initial Work costs for which a disbursement is sought by Tenant, until Landlord has disbursed the full amount of the Work Allowance); provided that in no event shall Landlord pay more than the amount of the Work Allowance, it being agreed that if the total cost of Tenant's Initial Work exceeds the estimate on which the pro rata payments were based, after the Work Allowance is exhausted, all costs of Tenant's Initial Work shall be paid by Tenant without any contribution by Landlord. The Work Allowance shall be payable to Tenant (or to Tenant's general contractor or construction manager, as directed by Tenant) in installments as Tenant's Initial Work progresses, but in no event more frequently than monthly. Installments of the Work Allowance shall be payable by Landlord within 30 days following Tenant's satisfaction of (or substantial compliance to Landlord's reasonable satisfaction with) each of the conditions required for disbursement set forth in this Section 3.03(a), it being understood that minor or insubstantial deviations from any documentary requirements included in said conditions that are otherwise reasonably satisfactory to Landlord shall not result in a withholding of the installment of the Work Allowance requested by Tenant.

(B) Prior to the payment of any installment, Tenant shall deliver to Landlord a request for disbursement (each being hereinafter called a "Tenant Requisition"), which shall be accompanied by (1) invoices for Tenant's Initial Work performed or incurred since the last Tenant Requisition and disbursement of the Work Allowance, (2) a certificate signed by Tenant's architect and an officer of Tenant certifying that to such architect's and officer's knowledge, Tenant's Initial Work and services represented by the aforesaid invoices have been satisfactorily completed in substantial accordance with the plans and specifications therefor approved by Landlord to the date of such certification, and have not been the subject of a prior disbursement of the Work Allowance, and (3) lien waivers by architects, contractors, subcontractors and all materialmen for all such work and services (it being understood and agreed that conditional lien waivers shall be delivered for work which is the subject of Tenant Requisition in question and unconditional lien waivers shall be delivered for all completed work which was the subject of the previous Tenant Requisition). If any matter concerning a Tenant Requisition is disputed by Landlord, any undisputed portion thereof shall be funded by Landlord without limiting Landlord's rights to dispute the disputed portion, and such dispute with respect to such disputed portion shall be resolved by arbitration in accordance with the provisions of Section 8.09. Each installment payment of the Work Allowance shall be limited to an amount equal to the amount requested by Tenant pursuant to clause (1) of this paragraph. In addition, if the amount requested by Tenant does not already reflect the Minimum Retainage against the amount requested by the applicable contractor or subcontractor, then Landlord shall be permitted to retain from each disbursement an amount equal to the Minimum Retainage of the amount requested to be disbursed by Tenant. "Minimum Retainage" means (1) 10% until at least 50% of Tenant's Initial Work is substantially complete and paid for and (2) 5% thereafter.

(C) Tenant is not then in default under this Lease.

(D) In no event shall more than 15% of the Work Allowance be made available to Tenant for Tenant's soft costs of construction (including, without limitation, filing and permit fees and expenses, architecture, engineering and other consulting fees and expenses and moving expenses).

(b) "Tenant's Initial Work" means the alterations, installations and improvements to be performed by Tenant in the Premises to prepare the same for initial occupancy thereof.

(c) The right to receive reimbursement for the cost of Tenant's Initial Work as set forth in this Section 3.03 shall be for the exclusive benefit of Tenant, it being the express intent of the parties hereto that in no event shall such right be conferred upon or for the benefit of any third party, including, without limitation, any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or any other person, firm or entity. Without in any way limiting the provisions of Section 6.12(b), Tenant shall indemnify and hold harmless each Landlord Indemnified Party from and against any and all liability, damages, claims, costs or expenses arising out of or relating to Landlord's payment of any installment of the Work Allowance directly to Tenant's general contractor or construction manager, together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and expenses.

(d) Tenant shall not be entitled to deliver a Tenant Requisition for a disbursement of any portion of the Work Allowance later than the date that is 60 days after the last day of the Work Reimbursement Period (the "Outside Requisition Date") and if Tenant shall fail to deliver a Tenant Requisition for a disbursement in connection with any Tenant's Initial Work by the Outside Requisition Date, then Tenant shall waive Tenant's right to receive any payment in connection therewith.

(e) If Tenant satisfies all of the conditions to payment of the Work Allowance in accordance with this Section 3.03 and Landlord fails to pay to Tenant any amount of the Work Allowance on or before the date on which the same is due and payable to Tenant under this Section 3.03, and provided that such failure continues for 30 days after Tenant notifies Landlord of such failure (which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: “ **THIS IS A NOTICE OF A CLAIMED OFFSET RIGHT GIVEN IN ACCORDANCE WITH SECTION 3.03(e) OF THE LEASE** ”), then, subject to the further provisions of this Section 3.03(e), Tenant may set off such amount against the next installments of Rent coming due under this Lease. Landlord shall have the right within such 30-day period to deliver written notice to Tenant that Landlord disputes, in good faith, Tenant’s entitlement to the amount claimed by Tenant, together with a reasonably detailed explanation of the reasons therefor, it being agreed that if Landlord timely delivers such written notice, then Tenant shall not have the right to set off such amounts until the dispute is resolved in accordance with the further provisions of this Section 3.03(e). If Landlord fails to deliver such written notice to Tenant within such 30-day period, Landlord shall be deemed to have accepted Tenant’s entitlement to the amount claimed by Tenant. In the event Landlord does deliver such written notice to Tenant within such 30-day period as provided above, the parties shall, in good faith, resolve such dispute(s) in a timely manner. Either party may submit any such dispute that remains unresolved for more than 30 days to arbitration in accordance with the provisions of Section 8.09. Any other dispute with respect to the payment of the Work Allowance shall also be resolved by arbitration in accordance with the provisions of Section 8.09. If any such dispute is resolved in favor of Tenant, then the amount in dispute shall be paid to Tenant within 10 days after the determination of the arbitrator, failing which Tenant may give to Landlord 5 Business Days’ notice of Tenant’s intent to offset the amount due to Tenant against the next installments of Rent due under this Lease (which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: “ **THIS IS A NOTICE OF A CLAIMED OFFSET RIGHT GIVEN IN ACCORDANCE WITH SECTION 3.03(e) OF THE LEASE** ”) and if Landlord does not, within such 5 Business Day period, pay such amount to Tenant, then Tenant may set off such amount against the next installments of Rent coming due under this Lease.

**3.04** Governmental Incentives. Landlord shall cooperate in all reasonable respects with Tenant’s efforts to obtain any available governmental and quasi-governmental benefits, incentives or entitlements; provided, that (i) such efforts shall not adversely affect the ability or eligibility of Landlord or other tenants or occupants of the Building and (ii) Tenant shall, within 30 days after receipt of each of Landlord’s invoices therefor, reimburse Landlord for the actual out-of-pocket costs incurred by Landlord in connection with such cooperation. In no event shall Landlord have any liability, nor, subject to clause (b) below, shall Tenant’s obligations under this Lease be affected, in the event that Tenant shall not obtain any particular governmental or quasi-governmental benefits, incentives or entitlements. Any governmental or quasi-governmental benefits, incentives or entitlements obtained, to the extent the same relate solely to Tenant and/or the Premises, shall be for the benefit of Tenant and shall be passed on to Tenant.

## ARTICLE 4

### Leasehold Improvements; Tenant Covenants

**4.01 Initial Improvements.** (a) Landlord's Work. (i) Landlord, at Landlord's expense, shall perform or cause to be performed the work required to satisfy the Delivery Condition and the Post Delivery Condition (collectively or individually, as the context requires, "Landlord's Work"). The "Delivery Condition" means the condition of the Premises which satisfies the criteria set forth on Exhibit E-1 attached hereto. The portion of Landlord's Work described on Exhibit E-1 attached hereto is referred to as "Landlord's Turnover Work". The "Post Delivery Condition" means the condition of the Premises which satisfies the criteria set forth on Exhibit E-2 attached hereto. The portion of Landlord's Work described on Exhibit E-2 attached hereto is referred to as "Landlord's Post Turnover Work". Attached hereto as Exhibit T is a list of the current working drawings for the Base Building Work (the "Base Building Working Drawings"). A copy of the Base Building Working Drawings have been made available to Tenant. The Base Building Working Drawings may be modified by Landlord from time to time without Tenant's consent; provided, that after giving effect to such modifications, the portion of the Base Building Working Drawings that was so modified (A) shall continue to be materially consistent with the original Base Building Working Drawings to the extent necessary to avoid any materially adverse effect on the Premises or any common areas of the Building which Tenant will be entitled to use during the Term and (B) shall not decrease or increase the rentable area of any of the floors comprising the Premises by more than 5% or materially alter the configuration of any of the floors comprising the Premises. Reasonably promptly after Tenant's written request, Landlord shall make available to Tenant any updates to the Base Building Working Drawings. Notwithstanding the foregoing, Landlord shall have the right to substitute any materials to be used as finishes in the construction of the Building, the Building lobbies, any common areas of the Building, and/or the facade of the Building which are described in the Base Building Working Drawings for materials of substantially similar quality; provided, that such materials are consistent with the standards of a First Class Office Building. The Base Building Work (as hereinafter defined) shall be performed by Landlord in compliance with all applicable Laws.

(ii) "Substantial Completion" or "Substantially Complete" means that the work in question has been completed, or would have been completed but for any Tenant Delay, except for (a) minor or insubstantial details of construction, decoration and mechanical adjustments, the non-completion of which will not materially and adversely interfere with Tenant's performance of Tenant's Work and (b) any work which, in accordance with good construction practice, should be completed after the completion of other work to be performed by Tenant (the items described in clauses (a) and (b) are, collectively, the "Punch List Items").

(iii) "Tenant Delay" means any actual delay which Landlord may encounter in the performance of Landlord's Work or other obligations of Landlord under this Lease by reason of any act, negligence, failure to act (where the provisions of this Lease or Laws impose a duty to act) or omission of Tenant or any Tenant's Contractors or any of such parties' agents, employees or contractors, including, without limitation, delays due to changes in or additions to Landlord's Work requested by Tenant, delays by Tenant in submission of information or giving authorizations or approvals or delays due to the postponement of any Landlord's Work at the request of Tenant; provided however, that all simultaneous delays which constitute a Tenant Delay hereunder shall be deemed to run concurrently and not consecutively and shall not be "double" counted. Tenant shall pay to Landlord any additional costs or expenses actually incurred by Landlord by reason of any Tenant Delay. Notwithstanding anything to the contrary contained in this Agreement, except to the extent Tenant has (or is deemed to have) knowledge of a Tenant Delay as evidenced by job minutes, correspondence (which may be via email), memoranda or other writings furnished to or issued by Tenant (which job minutes, correspondence, memoranda or other writings specifically refer to such circumstances giving rise to a Tenant Delay and to the fact of a Tenant Delay), Landlord shall notify Tenant of any Tenant Delay within 5 Business Days after Landlord actually becomes aware of such Tenant Delay (and such notice shall specify in reasonable detail the cause of the delay), failing which such delay shall constitute a Tenant Delay only from and after the date Landlord notifies Tenant thereof. In addition and notwithstanding any other provision of this Lease to the contrary, in the event of any simultaneous occurrence of Tenant Delay and Unavoidable Delay, for the duration of any such simultaneous occurrence such Tenant Delay shall be deemed to be Unavoidable Delay; provided, that Landlord does not incur any additional costs or expenses by reason of such Tenant Delay that Landlord would not have otherwise incurred as a result of such simultaneous Unavoidable Delay.

(iv) When Landlord believes that Landlord's Turnover Work and/or Landlord's Post Turnover Work (or any item thereof set forth on Exhibit E-2 attached hereto), as applicable, is, or is about to be, Substantially Complete, Landlord shall deliver a notice to Tenant (a "Substantial Completion Notice") stating that Landlord believes that such applicable portion of Landlord's Work is, or is about to be, Substantially Complete, and setting forth a date (the "Walk-Through Date"), not less than 5 Business Days after the giving of such notice, for the parties to conduct a joint inspection of such portion of Landlord's Work. On the Walk-Through Date, Landlord and Tenant and their respective consultants shall jointly inspect such portion of Landlord's Work to determine if such portion of Landlord's Work is Substantially Complete. Within 3 Business Days after such walk-through, Tenant shall deliver a written notice to Landlord (the "Tenant Inspection Notice"), which notice shall either (x) confirm Tenant's agreement that Landlord's Work is Substantially Complete and specify in reasonable detail any Punch List Items yet to be completed, or (y) dispute the occurrence of Substantial Completion of Landlord's Work, specifying in reasonable detail all items of work asserted to be incomplete which result in Landlord's Work not being Substantially Complete (provided that the mere fact that Tenant concludes that Substantial Completion has not occurred shall not mean that Substantial Completion has not occurred). If, in the Tenant Inspection Notice, (i) Tenant concurs that Landlord's Work is Substantially Complete, Tenant shall be deemed to have accepted delivery of possession of the Premises and Landlord's Work therein and Landlord shall have no further obligation to perform any work, supply any materials, or make any alterations or improvements to prepare the Premises for Tenant's occupancy, subject to Landlord's completion of any Punch-List Items, which Landlord shall proceed with reasonable diligence to complete and any Latent Defects, which Landlord shall proceed with reasonable diligence to remedy in accordance with the further provisions of this Section 4.01(a)(iv), or (ii) Tenant concludes that Landlord's Work is not Substantially Complete, Tenant shall be deemed to concur that any item of work not specified and listed as incomplete in the Tenant Inspection Notice is completed for all purposes of this Section 4.01 and this Lease. If Tenant fails to appear on the Walk-Through Date, or if the parties conduct a joint inspection of Landlord's Work and Tenant fails within two (2) Business Days after such inspection to deliver to Landlord the Tenant Inspection Notice containing the information required pursuant to clauses (x) or (y) of this Section 4.01(a)(iv) (as applicable), then in either such case Tenant shall be deemed to have concurred that Landlord's Work has been fully completed as of the date set forth as the date of Substantial Completion in the Substantial Completion Notice and Tenant shall be deemed to have accepted delivery of possession of the Premises and Landlord's Work therein and Landlord shall have no further obligation to perform any work, supply any materials, or make any alterations or improvements to prepare the Premises for Tenant's occupancy. For the purposes of this Lease, "Latent Defects" shall mean defects in the construction of Landlord's Work that are not observable by visible inspection at the time the Punch List is prepared. Landlord shall remedy any Latent Defects in Landlord's Work affecting the Premises of which Tenant notifies Landlord within the Warranty Period for the relevant item of work. Landlord shall commence to perform such work promptly following such notice from Tenant and shall thereafter diligently perform the same. "Warranty Period" means, with respect to any item of work, the period for which such item is covered by any warranty Landlord receives from a contractor or subcontractor. Landlord agrees that each contract with contractor(s) and subcontractor(s) for all items of Landlord's Work shall contain customary warranties with respect to the applicable item of work consistent with good construction practice.

(b) Tenant's Early Access. (i) Tenant and any of Tenant's architects, engineers and contractors (collectively, "Tenant's Contractors") shall have access to the Premises prior to the Possession Date, but only from and after the Access Date, for the sole purpose of (i) performing visual inspections, (ii) preparing surveys and drawings, taking measurements and preparing plans and specifications and (iii) verifying field conditions ("Pre-Construction Activities"), in the Premises. The "Access Date" shall be the date determined by Landlord in good faith after which, in accordance with good construction practice, it is feasible for Tenant to commence Pre-Construction Activities in the Premises. Such early access shall not interfere with or delay completion of (x) the work performed by or on behalf of Landlord relating to construction of the Building (the "Base Building Work") or (y) the work performed by or on behalf of other tenants or occupants. Landlord shall in all events have priority with respect to (A) the use of systems and facilities of the Building, and (B) the scheduling and performance of any work in the Building.

(ii) If, in Landlord's sole discretion, the Pre-Construction Activities shall interfere with or delay the performance of the Base Building Work or the work of other tenants or occupants, then upon Landlord's request, all Pre-Construction Activities shall immediately cease and Tenant shall cause all Tenant's Contractors to immediately cease any Pre-Construction Activities and leave the Building. In connection with the Pre-Construction Activities, Tenant shall comply, and cause Tenant's Contractors to comply, promptly with all procedures and regulations reasonably prescribed by Landlord from time to time for coordinating the Base Building Work and Pre-Construction Activities each with the other and with any other activity or work in the Building, including, without limitation, the use of compatible union labor.

(iii) Any access to or entry on the Building by Tenant prior to the Possession Date, pursuant to the provisions of this Section 4.01(b) or otherwise, shall be subject to and upon all of the applicable provisions of this Lease, including, without limitation, the provisions set forth herein governing insurance to be carried by Tenant and Tenant's indemnification of Landlord; provided, that there shall be no obligation on the part of Tenant solely because of such access to pay any Fixed Rent or Recurring Additional Charges for any period prior to the time such payments shall commence to be payable pursuant to the provisions of Article 2 of this Lease.

(iv) If Tenant fails or refuses to comply or to cause Tenant's Contractors to comply with any of the obligations described or referred to in this Section 4.01(b), then, without limiting any of Landlord's other rights and remedies, Landlord may require Tenant immediately to cease the performance of any Pre-Construction Activities until such failure or refusal is cured.

(v) Without limiting the generality of any other provision of this Section 4.01, Tenant shall pay to Landlord as Additional Charges, within 30 days after receipt of an invoice therefor, any incremental costs actually incurred by Landlord by reason of Tenant's early access pursuant to this Section 4.01(b) (including, without limitation, due to any delay in the performance of the Base Building Work or by reason of the consumption of utilities).

(c) Tenant's Initial Work. (i) Tenant's Initial Work shall constitute an Alteration and shall be subject to all provisions of this Lease applicable to Alterations, including, without limitation, the provisions of Section 4.02. In addition to such provisions relating to all Alterations, the provisions of this Section 4.01(c) shall apply to Tenant's Initial Work.

(ii) Tenant shall cause Tenant's Contractors to perform Tenant's Initial Work in a manner that does not interfere with, impede or adversely affect (including due to the impact of noise, smoke or pollutants) (i) the performance of the Base Building Work, (ii) the performance of construction by or on behalf of other tenants and occupants or (iii) from and after the date the first tenant or occupant of the Building occupies any portion of its premises for the normal conduct of its business, the use and enjoyment of any tenant or occupant of the Building of its premises or access to its premises or any common areas which such tenant or occupant is entitled to use or access. Tenant shall take all reasonable steps requested by Landlord to protect the Base Building Work from and against damage arising out of the performance of Tenant's Initial Work.

(iii) Tenant acknowledges that Landlord and Landlord's contractors shall have priority (with respect to use of facilities, access to Building areas, use of the hoist(s) and elevators, etc.) at all times over Tenant's Contractors. Notwithstanding the preceding sentence, Landlord shall use reasonable efforts to accommodate Tenant's Contractors so long as the same does not interfere with the performance of the Base Building Work or work performed by or on behalf of any existing or future tenants or occupants of the Building; provided, that Landlord agrees to reasonably cooperate with Tenant in order to provide Tenant with reasonably adequate elevator and/or hoist service to the Premises during the performance of Tenant's Initial Work. Landlord and Tenant agree to reasonably cooperate and discuss such elevator and/or hoist services and the logistics for access to the Premises with respect thereto during the performance of Tenant's Initial Work at the quarterly meetings described in Section 4.01(d) below and Landlord and Tenant agree that the following shall apply with respect to Tenant's use of the elevator and hoist services during the performance of Tenant's Initial Work:

(A) Hoists. (I) From and after the Possession Date, Landlord shall provide Tenant access to the hoists, subject to and in accordance with this Section 4.01(c). The hoists shall remain available for Tenant's use until at least one of the Building freight elevators serving the Premises is operational and available for use by Tenant in lieu of the hoists. Tenant shall have the right to a pro rata allocation of usage of the hoists during Business Hours on Business Days for deliveries of materials and equipment, subject to Landlord's absolute priority in using the hoists for the performance of the Base Building Work during Business Hours on Business Days. Tenant shall also have the right to a reasonable allocation of reserved usage of the hoists for such deliveries on a "first to reserve" basis during times other than Business Hours on Business Days. All such usage of the hoists shall be subject to Landlord's non-discriminatory procedures for the allocation or reservation of use of the hoists. So long as Landlord is operating the hoists during Business Hours on Business Days, Tenant's use of such hoists during Business Hours on Business Days shall be at no cost to Tenant. If Landlord is no longer operating one or more of the hoists, but such hoist(s) has not yet been removed, Tenant may use such hoist during Business Hours and on Business Days at Tenant's cost (as prorated among the tenants if more than one tenant is using the hoists at a particular time). Tenant shall pay for the use of the hoists at Landlord's actual cost for such service plus a Landlord fee and overhead charge of 5% of such costs. Tenant shall pay its proportionate share of the cost (as prorated among the tenants and/or Landlord if more than one tenant and/or Landlord is using the Hoists at a particular time) of any use of the hoists during times other than Business Hours on Business Days. The Hoist Impacted Area Work (as hereinafter defined) shall be Substantially Completed by Landlord, at Landlord's sole cost and expense, no later than December 31, 2018, it being agreed that Tenant's sole and exclusive remedy for Landlord's failure to Substantially Complete the Hoist Impacted Area Work on or before December 31, 2018 is set forth in sub-clause (II) below.

(II) Notwithstanding anything to the contrary contained herein, if the Hoist Impacted Area Work is not Substantially Complete (or is not deemed Substantially Complete) with respect to any floor of the Premises on or before the date upon which Tenant first occupies the Premises for the ordinary conduct of business, other than by reason of Tenant Delay, then, as Tenant's sole and exclusive remedy therefor and without duplication of any penalties described in Section 1.03(c), the Fixed Rent shall be abated in the proportion that the Hoist Impacted Area bears to the total rentable square footage of the Premises until the Hoist Impacted Area Work is Substantially Complete or would have been Substantially Complete but for any Tenant Delay. "Hoist Impacted Area" means the area of the Premises shown on Exhibit Z and which Hoist Impacted Area shall be deemed to contain the rentable square footage shown on Exhibit Z as of the date hereof. "Hoist Impacted Area Work" means the removal of the hoist, Temporary Hoist Enclosure and all related equipment in the Hoist Impacted Area, including all tie-backs, and the Substantial Completion of Landlord's Work in the Hoist Impacted Area, including, without limitation, completion of the curtain wall within the Hoist Impacted Area. Landlord shall use commercially reasonable efforts to maintain the Temporary Hoist Enclosure and Hoist Impacted Area in such a manner so as to minimize any interference with Tenant's use and occupancy of the Premises and Landlord and Tenant shall reasonably cooperate in connection with the Substantial Completion of the Hoist Impacted Area Work by Landlord so as to reasonably minimize any interference with Tenant's use and occupancy of the Premises. "Temporary Hoist Enclosure" means a "weather tight" code compliant temporary enclosure enclosing the Hoist Impacted Area.

(B) Freight Elevator(s). Tenant shall have the right to a pro rata allocation of usage of the freight elevators during Business Hours on Business Days for deliveries of materials and equipment, subject to Landlord's absolute priority in using the freight elevators for the performance of the Base Building Work during Business Hours on Business Days. Tenant shall also have the right to a pro rata allocation of reserved usage of the freight elevators for such deliveries on a "first to reserve" basis during times other than Business Hours on Business Days. All such usage of the freight elevators shall be subject to Landlord's non-discriminatory procedures for the allocation or reservation of use of the freight elevators. So long as Landlord is operating the freight elevators during Business Hours on Business Days, Tenant's use of such freight elevators during Business Hours on Business Days shall be at no cost to Tenant. If Landlord is no longer operating one or more of the freight elevators, Tenant may use such freight elevator during Business Hours and on Business Days at Tenant's cost (as prorated among the tenants if more than one tenant is using the freight elevators at a particular time). Tenant shall pay for the use of the freight elevators at Landlord's actual cost for such service plus a Landlord fee and overhead charge of 5% of such costs. Tenant shall pay its proportionate share of the cost (as prorated among the tenants and/or Landlord if more than one tenant and/or Landlord is using the freight elevator at a particular time) of any use of the freight elevators during times other than Business Hours on Business Days.

(C) Passenger Elevators. Tenant shall have the right to use 2 of the Elevators for transportation of personnel, equipment or materials in connection with the performance of Tenant's Initial Work from and after the Possession Date, and until the issuance of the TCO. So long as Landlord is operating such passenger elevators during Business Hours on Business Days (i.e., Landlord is already paying for an operator), Tenant's use of such passenger elevators during Business Hours on Business Days shall be at no cost to Tenant. In all other cases, if Tenant elects to so use such passenger elevators, Tenant shall use an operator hired by Landlord and Tenant shall pay the cost of hiring such operator at Landlord's actual cost for such service plus a Landlord fee and overhead charge of 5% of such costs. Tenant, at its sole cost and expense, shall protect such passenger elevators from and against damage arising out of such use and promptly repair and restore any damage to such elevators arising from such use by Tenant, its contractors and agents. All such usage of the passenger elevators shall be subject to Landlord's non-discriminatory procedures for the allocation or reservation of use of the passenger elevators.

(iv) In performing Tenant's Initial Work, Tenant shall comply with all reasonable procedures prescribed by Landlord for the coordination of Tenant's Initial Work with the Base Building Work and any other work in the Building; provided that such procedures shall not be applied in a discriminatory manner. Without limiting the generality of the provisions of Section 4.01(c)(i), the provisions of Section 4.02(e) shall apply with respect to the performance of Tenant's Initial Work. Tenant shall ensure that Tenant's Initial Work shall be performed in a manner which shall not create a labor dispute. Tenant shall immediately stop performing Tenant's Initial Work if Landlord notifies Tenant that continuing such work has created, or would create, a labor dispute.

(v) Landlord shall provide, and Tenant shall make arrangements with Landlord for, temporary water, power, heat and air and connections therefor during the period when Tenant's Initial Work is being constructed, and Tenant shall pay any costs actually incurred by Landlord by reason of Tenant's use of any thereof in connection with the performance of Tenant's Initial Work or otherwise until such time as Landlord is to provide such services pursuant to Section 3.01. The foregoing costs actually incurred by Landlord shall either be based on submeters measuring Tenant's use of such services or shall be reasonably determined by Landlord based on Tenant's pro-rata share of the use of such services based on the total square footage of construction being undertaken by Tenant at the Building versus the total square footage of all construction being undertaken at the Building. Tenant shall be responsible, at Tenant's sole cost and expense, for the removal of trash and construction debris resulting from the construction of Tenant's Initial Work. To the extent not otherwise covered herein, Tenant shall pay to Landlord the incremental cost of General Conditions to the extent attributable to the performance of Tenant's Initial Work, including, without limitation, the use of the hoist(s), loading docks and elevators as more particularly described in Section 4.01(c)(iii) above. "General Conditions" means, without limitation, the actual cost of field labor, field supervision, cleanup, removal of waste and debris, protection of work in progress or completed, insurance and security with respect to the Project, maintenance and operation of temporary facilities and services, construction barricades, ventilation, taxes, operation of loading docks, elevator and hoist operators, teamsters, operating and hoist engineers, master mechanic(s), maintenance mechanic(s), teamster foreman, and other support and security personnel, permit and similar fees and other out-of-pocket expenses incurred in connection therewith and similar costs included in general conditions in accordance with good construction practice in New York City. If more than one tenant of the Building is performing Alterations at the same time then any incremental additional General Conditions incurred by landlord shall be equitably apportioned among all such Tenants without duplication. If, prior to the date upon which Landlord removes the hoist(s) from the Project, Tenant shall request from Landlord the right to use such hoist(s) in connection with the performance of Tenant's Initial Work, then Landlord shall (subject to Landlord having priority in accordance with the provisions of Section 4.01(c)(iii) and the use of the hoist by other tenants and occupants) permit Tenant to use the same. Tenant shall pay all reasonable incremental costs incurred by Landlord by reason of Tenant's use of the hoist(s), loading docks and elevators as more particularly described in Section 4.01(c)(iii) above, except to the extent that any such use of such hoist is required as a result of the Building's passenger elevators not being unavailable for Tenant's use in accordance with Section 4.01(c)(iii)(C) above. Without limiting the generality of the foregoing, if, as a result of Tenant's approved usage of the hoist(s), Landlord determines that it is necessary for Landlord to use said hoist(s) on an overtime basis, then after reasonable advance notice to Tenant, Landlord may do so and any incremental costs (without profit or mark-up) actually incurred by Landlord by reason of such overtime usage shall be paid for by Tenant. All amounts payable by Tenant under this Section 4.01(c)(v) shall constitute Additional Charges and shall be paid by Tenant to Landlord within 30 days of Tenant's receipt from Landlord of an invoice and reasonable back-up documentation therefor.

(vi) If Landlord incurs any incremental costs due to any delay in the performance or completion of the Base Building Work which delay results from any Tenant Delay, Tenant shall pay such costs to Landlord within 30 days after receipt of an invoice and reasonable supporting documentation therefor. If more than one tenant of the Building is performing Alterations at the same time then any incremental additional General Conditions incurred by Landlord shall be equitably apportioned among all such tenants without duplication.

(d) Violations and Landlord Delay. (i) From and after the Possession Date, in the event that Tenant is unable to obtain any building permits or other permits, approvals, certificates or sign-offs from any governmental authority required for the performance of Tenant's Initial Work or the legal occupancy by Tenant of the Premises for the purposes expressly permitted under this Lease and to the extent such failure results from the existence of any violations of Law affecting the Building resulting from the performance of any work by Landlord or other actions or failure(s) to act of Landlord ("Violations"), but specifically excluding any violations caused by or resulting from the action(s) or failure(s) to act of Tenant, Tenant's contractors or any Tenant Indemnified Party or any other tenant, then following written notice thereof from Tenant, Landlord shall proceed reasonably diligently and in good faith to cure and cause each such Violation to be discharged of record. If there is any violation caused by the acts or omissions of other tenants or occupants of the Building, Landlord will use commercially reasonable efforts to cause such tenant or occupant to comply with the provisions of its lease but Landlord shall not be required to institute litigation, arbitration or any other proceeding against such tenant or occupant of the Building, send a default notice, seek to terminate any lease or incur any expenses (other than *de minimis* expenses) in connection therewith.

(ii) From and after the Possession Date, in the event that Tenant is unable to perform Tenant's Initial Work to the extent resulting from any Landlord Delay (as hereinafter defined), but specifically excluding any interference caused by or resulting from Unavoidable Delay or any action(s) or failure(s) to act of Tenant, Tenant's contractors or any Tenant Indemnified Party, then following written notice thereof from Tenant, Landlord shall proceed reasonably diligently and in good faith to cure such Landlord Delay. "Landlord Delay" means any actual delay which Tenant shall encounter in the performance of Tenant's Initial Work to the extent resulting from Landlord's default of its obligations under Sections 4.01(c)(iii), 4.01(c)(v) and 4.06(b) of this Lease, but specifically excluding any Landlord Delay that is caused by Unavoidable Delay (e.g., the failure of a utility company to provide services shall not be deemed a default by Landlord under the aforementioned provisions). Notwithstanding anything contained in this Lease to the contrary, Tenant shall notify Landlord of any such Landlord Delay (a "Landlord Delay Notice") within 3 Business Days after Tenant actually becomes aware of such Landlord Delay, failing which such delay shall constitute a Landlord Delay only from and after the date Tenant notifies Landlord thereof. In addition and notwithstanding any other provision of this Lease to the contrary, in the event of any simultaneous occurrence of Landlord Delay and Unavoidable Delay, for the duration of any such simultaneous occurrence such Landlord Delay shall be deemed to be Unavoidable Delay and shall not constitute Landlord Delay; provided, that Tenant does not suffer any actual delay in the performance of Tenant's Initial Work by reason of such Landlord Delay that Tenant would not have otherwise incurred as a result of such simultaneous Unavoidable Delay. No Landlord Delay shall be deemed to have occurred unless Tenant is actually delayed in performing Tenant's Initial Work and opening for the conduct of business as a result of the occurrence of a Landlord Delay. Landlord shall have 7 Business Days from Landlord's receipt of such Landlord Delay Notice from Tenant to deliver written notice to Tenant that Landlord disputes, in good faith, the determinations by Tenant that a Landlord Delay has occurred, together with a reasonably detailed explanation of the reasons therefor. If Landlord fails to deliver such written notice to Tenant within such 7 Business Day period, Landlord shall be deemed to have accepted Tenant's determination that a Landlord Delay has occurred. In the event Landlord does deliver such written notice to Tenant within such 7 Business Day period as provided above, the parties shall, in good faith, resolve such dispute(s) in a timely manner. Either party may submit a dispute regarding a Landlord Delay that remains unresolved for more than 30 days to arbitration in accordance with the provisions of Section 8.09. Any simultaneous delays which constitute a Landlord Delay hereunder shall be deemed to run concurrently and not consecutively to the extent of Tenant's actual delay caused by such simultaneous delays and shall not be "double" counted.

(iii) Subject to the provisions of this Section 4.01(d), if Tenant is unable to perform Tenant's Initial Work or open for the conduct of business to the extent resulting from any Violation, and (1) Landlord fails to cure such Violation within 10 days (or within 20 days if such Violation is not one which is reasonably susceptible of cure and removal of record within such 10 day period) after notice thereof from Tenant indicating the specific Violation, together with reasonable evidence demonstrating that such Violation is the sole reason Tenant is unable to perform Tenant's Initial Work or open for the conduct of business and (2) Landlord does not dispute, in good faith, such determination by Tenant (or, if Landlord does dispute such determination, and Tenant's position in such dispute ultimately prevails), then the Rent Commencement Date shall be extended 1 day for each day such inability continues until the earlier to occur of (x) such Violation is cured and (y) the date Tenant is able to perform Tenant's Initial Work or open for the conduct of business.

(iv) Subject to the provisions of this Section 4.01(d), if Tenant is unable to perform Tenant's Initial Work or open for the conduct of business to the extent resulting from any Landlord Delay other than a Landlord Delay resulting from a Violation, and (1) Landlord fails to cure such Landlord Delay within 5 Business Days after notice thereof from Tenant indicating the specific cause of such Landlord Delay, together with reasonable evidence demonstrating that such Landlord Delay is the sole reason Tenant is unable to perform Tenant's Initial Work or open for the conduct of business and (2) Landlord does not dispute, in good faith, such determination by Tenant (or, if Landlord does dispute such determination, and Tenant's position in such dispute ultimately prevails), then the Rent Commencement Date shall be extended 1 day for each day such inability continues until the earlier to occur of (x) such Landlord Delay is cured and (y) the date Tenant is able to perform Tenant's Initial Work or open for the conduct of business. Any simultaneous delays under this clause (iv) relating to a Landlord Delay other than a Landlord Delay resulting from a Violation and under clause (iii) above relating to a Violation shall be deemed to run concurrently and not consecutively to the extent of Tenant's actual delay in performing Tenant's Initial Work caused by such simultaneous delays and shall not be "double" counted.

(e) Following the execution of this Lease, Landlord and Tenant shall reasonably cooperate to meet quarterly to discuss the progress of the Base Building Work and Landlord's Work. At such quarterly meetings the parties shall discuss, among other things, the design elements of Tenant's Initial Work.

(f) Notwithstanding anything to the contrary contained herein, Landlord shall have the right to install rated partitions around the core of the Building substantially as shown on Exhibit X in connection with the performance of the Base Building Work and/or Landlord's Work. Tenant shall have the right to perform Tenant's Initial Work within the partitioned area subject to Section 4.01(c), provided that Tenant shall not remove such partitions, or connect or attempt to connect to, disconnect, move, disturb or interfere with in any way, the base building systems located within the partitioned area, or seek any Sign Offs with respect to Tenant's systems connecting to any base building systems, until Landlord has obtained all Sign Offs with respect to such base building systems and given notice thereof to Tenant; provided, further, that Landlord agrees to reasonably cooperate with Tenant to allow Tenant to perform work behind such rated partitions to the extent necessary in connection with Tenant's Initial Work. Upon the issuance of all Sign Offs with respect to the base building systems, Landlord shall promptly deliver notice thereof to Tenant and thereafter Tenant may remove such partitions (it being agreed that Tenant may elect to either remove such partitions and Landlord shall reimburse Tenant for the reasonable out-of-pocket costs incurred by Tenant in connection with such removal or to have Landlord remove such partitions at Landlord's cost and expense) and connect to base building systems. "Sign Offs" means any applicable sign-offs from any applicable governmental authority required for the performance the Base Building Work, Landlord's Work, Tenant's Initial Work or to obtain the TCO, as applicable.

(g) Any dispute between Landlord and Tenant arising under this Section 4.01 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

**4.02 Alterations.** (a) Except as hereinafter expressly provided, Tenant shall make no improvements, changes or alterations in or to the Premises (“Alterations”) without Landlord’s prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Landlord’s approval shall not be required for (x) minor Alterations which are purely decorative in nature such as wallpapering, millwork, painting and carpeting (collectively, “Decorative Alterations”) and (y) Non-Material Alterations; provided, that (A) with respect to Decorative Alterations and Non-Material Alterations, Tenant shall deliver notice thereof to Landlord at least 10 Business Days prior to the commencement thereof, including detailed plans and specifications for any Non-Material Alteration (except to the extent the relevant Non-Material Alteration is of such a minor nature that it would not be customary industry practice for landlords of First Class Office Buildings to require their tenants to prepare plans and/or specifications for such work) and (B) Tenant shall adhere to the other applicable requirements of this Section 4.02. “Non-Material Alteration” means Alterations that (i) are limited to the interior of the Premises and do not affect the exterior (including the appearance) of the Building or any portion thereof, (ii) are not structural and do not adversely affect the strength of the Building or any portion thereof, (iii) do not affect the usage or the functioning of any of the Building systems, (iv) do not affect other tenants or occupants of the Building, (v) do not require a change to the Building’s certificate of occupancy, (vi) do not require a permit from the New York City Department of Buildings and (vii) do not exceed the Non-Material Alterations Cap. The “Non-Material Alterations Cap” means an aggregate of \$100,000 per full floor of the Premises for all Non-Material Alterations performed by Tenant in any rolling 12-month period, Subject to CPI Increases (as hereinafter defined).

(b) Tenant, in connection with any Alteration, shall comply with the Rules and Regulations, the Tenant Design Standards annexed hereto as Exhibit I-1 and the Construction Rules annexed hereto as Exhibit I-2, as such Tenant Design Standards and/or Construction Rules may be amended by Landlord from time to time; provided, that Tenant shall not be bound by any such amendment that (i) imposes, except to a *de minimis* extent, any new or increased costs or financial obligations on Tenant (unless any such cost or financial obligation is the result of compliance with any Laws) or (ii) unreasonably affects the conduct of Tenant’s business in the Premises. Tenant shall not proceed with any Alteration (other than Decorative Alterations) unless and until Landlord approves Tenant’s plans and specifications therefor. In such instances in which Landlord’s approval shall be required with respect to the performance of any Alteration, Landlord shall, within 15 Business Days following receipt of Tenant’s plans for the performance of such Alteration (or (i) with respect to Tenant’s plans for the performance of Tenant’s Initial Work, within 25 Business Days and (ii) in the event of a resubmission of Tenant’s Plans not involving material changes, within 10 Business Days with respect to Tenant’s plans for the performance of Tenant’s Initial Work and within 5 Business Days with respect to Tenant’s plans for the performance of any other Alteration), advise Tenant of Landlord’s approval or disapproval of such plans or any part thereof. If Landlord shall fail to approve or disapprove Tenant’s plans or any part thereof within such 15 Business Day period (or such 25 Business Day period for plans for Tenant’s Initial Work or such 10 Business Day or 5 Business Day period, as applicable, for resubmissions not involving material changes), Tenant may give to Landlord a notice of such failure, which notice shall contain a legend in not less than 14 point font bold upper case letters as follows: “**FAILURE TO APPROVE OR DISAPPROVE TENANT’S PLANS WITHIN 5 BUSINESS DAYS SHALL RESULT IN LANDLORD’S DEEMED APPROVAL OF TENANT’S PLANS**”, and if Landlord shall fail to approve or disapprove such Tenant’s plans within such 5 Business Day period, Landlord shall be deemed to have approved such plans. If Landlord shall disapprove such plans (or any part thereof), Landlord shall set forth its reasons for such disapproval in writing and in reasonable detail and identify those portions of the plans so disapproved. Any review or approval by Landlord of plans and specifications with respect to any Alteration is solely for Landlord’s benefit, and without any representation or warranty to Tenant with respect to the adequacy, correctness or efficiency thereof, its compliance with Laws or otherwise.

(c) Tenant shall pay to Landlord within 30 days following demand Landlord's reasonable, actual third-party out-of-pocket costs and expenses (including, without limitation, the reasonable fees of any architect or engineer employed by Landlord for such purpose) for reviewing plans and specifications and inspecting Alterations, in addition to any incremental cost incurred by Landlord as a result of the use of any standby personnel reasonably required as a result of any Alteration. Landlord shall not be entitled to charge (nor shall any Affiliate of Landlord charge) a supervisory or other review fee, except as expressly provided in this Lease.

(d) Before proceeding with any Alteration (other than Tenant's Initial Work) that will cost more than \$500,000.00, Subject to CPI Increases (exclusive of the costs of decorating work and items constituting Tenant's Property), as estimated by a reputable contractor designated by Landlord, Tenant shall furnish to Landlord one of the following (as selected by Tenant): (i) a cash deposit, (ii) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord) or (iii) an irrevocable, unconditional, negotiable letter of credit, issued by a bank and in a form satisfactory to Landlord; each to be equal to 110% of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than 30 days prior to the expiration of the then current letter of credit, failing which Landlord may present the then current letter of credit for payment. Upon (A) the completion of the Alteration in accordance with the terms of this Section 4.02 and (B) the submission to Landlord of (x) proof evidencing the payment in full for said Alteration and (y) written unconditional lien waivers of mechanics' liens and other liens on the Project from all contractors performing said Alteration, the security deposited with Landlord (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure properly to perform, complete and fully pay for any Alteration, as determined by Landlord, Landlord may, upon notice to Tenant, draw on the security deposited under this Section 4.02(d) to the extent Landlord deems necessary in connection with said Alteration, the restoration and/or protection of the Premises or the Project and the payment of any costs, damages or expenses resulting therefrom; provided however that Landlord shall not draw upon such security if Tenant is then contesting in good faith its obligation to make payment and Tenant has so notified Landlord of same unless Landlord determines in its sole discretion that same is necessary for Landlord to pay any costs or expenses so that Landlord will not be subject to criminal penalty or any other fine or charge or so that the Premises or any part thereof or the Project, or any part thereof, shall not be subjected to any lien or encumbrance or otherwise adversely affected, by reason of Tenant's failure to so properly perform, complete and/or fully pay for such Alteration. Notwithstanding the foregoing, the provisions of this Section 4.02(d) shall not apply with respect to any Alteration by Tenant so long as Tenant is (1) the original named Tenant, (2) an entity created by merger, reorganization or recapitalization of or with the original named Tenant, (3) a purchaser of all or substantially all of the original named Tenant's stock or assets or (4) an Affiliate of the original named Tenant (each, an "Intercept Tenant").

(e) Tenant shall obtain (and furnish copies to Landlord of) all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, and in compliance with all Laws (including, without limitation, Section 5 of the New York State Lien Law) and with the plans and specifications approved by Landlord. At Tenant's request, Landlord shall execute all required permit forms prior to the submission of plans by Tenant and/or Landlord's review of such plans, but the execution of such forms by Landlord shall not constitute approval of the Alterations in question. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the then standards for the Building established by Landlord. Alterations shall be performed by architects, engineers and contractors first approved by Landlord (which approval shall not be unreasonably withheld or delayed); provided, that any Alterations which involve a connection(s) or a tie-in to the systems of the Building shall be performed only by the contractor(s) designated by Landlord (provided, further, that the charges of such contractor(s) shall be reasonably competitive with the charges of contractor(s) providing similar services to other First Class Office Buildings). Landlord hereby agrees that the contractors, subcontractors, architects, engineers and/or expeditors listed on Exhibit K attached hereto are hereby approved by Landlord on the date hereof; provided, that Landlord may, from time to time, reasonably remove or add one or more contractors, subcontractors, architects, engineers and/or expeditors from or to Exhibit K in Landlord's reasonable discretion. The performance of any Alteration or any other work in the Project shall not be carried out in a manner which would violate the construction rules and regulations set forth in Exhibit I-2. Tenant shall immediately stop the performance of any work or service by any party if Landlord notifies Tenant that continuing such performance would violate the construction rules and regulations set forth in Exhibit I-2, and Tenant shall not resume the performance of such work or service until such time as the same may be performed in a manner which shall not violate such rules and regulations.

(f) Throughout the performance of Alterations, Tenant and Tenant's Contractors (as defined in Exhibit J) shall carry insurance meeting the requirements set forth in Sections (B) and (C) of Exhibit J attached hereto and Section 7.02 of this Lease. Tenant shall furnish Landlord with evidence that such insurance is in effect no less than 10 days prior to the commencement of any Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations. Tenant shall require that all insurance policies carried by any Tenant's Contractors include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against Landlord, The Related Companies, L.P., Oxford Hudson Yards LLC, Mitsui Fudosan America, Inc., MFA 55 HY LLC, 55 Hudson Yards Member LLC and any of such entities' officers, agents, or employees. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged. In the event that Tenant or any of Tenant's Contractors fails to maintain the coverages or limits as required herein, Landlord may obtain such insurance as an agent of such party without prior notice. Any premiums paid by Landlord to effect such coverages together with interest thereon at the Interest Rate from the date paid by Landlord until the date reimbursed by Tenant shall be payable by Tenant to Landlord; provided however that to the extent such insurance shall be cancelable, then such premiums shall be pro-rated and reimbursed to the extent funds are returned to Landlord by the insurance company as soon as Tenant or any of Tenant's Contractors places the appropriate insurance coverage.

(g) Should any mechanics' or other liens be filed against any portion of the Project by reason of the acts or omissions of, or because of a claim against, Tenant or anyone claiming under or through Tenant, Tenant shall cause the same to be canceled or discharged of record by bond or otherwise within 30 days after notice from Landlord. If Tenant shall fail to cancel or discharge said lien or liens within said 30 day period, or if Landlord is required to discharge any of said liens prior to the end of said 30 day period pursuant to any Superior Mortgage or Superior Lease, Landlord may cancel or discharge the same and, upon Landlord's demand, Tenant shall reimburse Landlord for all actual out-of-pocket costs incurred in canceling or discharging such liens, together with interest thereon at the Interest Rate from the date incurred by Landlord to the date of payment by Tenant, such reimbursement to be made within 30 days after receipt by Tenant of a written statement from Landlord as to the amount of such costs. Tenant shall indemnify and hold Landlord harmless from and against all actual out-of-pocket costs (including, without limitation, reasonable attorneys' fees and disbursements and costs of suit), losses, liabilities or causes of action arising out of or relating to any Alteration, including, without limitation, any mechanics' or other liens asserted in connection with such Alteration.

(h) Tenant shall deliver to Landlord, within 30 days after the completion of an Alteration, "as-built" drawings thereof using the AutoCAD Computer Assisted Drafting and Design System, Version 12 or later or such other system or medium as Landlord may accept. During the Term, Tenant shall keep records of Alterations costing in excess of \$50,000 including plans and specifications, copies of contracts, invoices, evidence of payment and all other records customarily maintained in the real estate business relating to Alterations and the cost thereof and shall, within 30 days after demand by Landlord, furnish to Landlord copies of such records.

(i) All Alterations to and Fixtures installed by Tenant in the Premises shall be fully paid for by Tenant in cash and shall not be subject to conditional bills of sale, chattel mortgages, or other title retention agreements.

(j) Landlord shall design the Building with the intent of achieving a "Gold" level LEED certification with respect thereto. All Alterations shall be designed and performed by Tenant in compliance with the requirements set forth on Exhibit P attached hereto. Landlord shall cooperate with Tenant, at no cost to Landlord, by providing to Tenant and Tenant's consultants any necessary and pertinent documentation reasonably requested by Tenant which relates to Building systems, materials, and site characteristics required for Tenant to apply for LEED certification for the Premises.

(k) Any dispute between Landlord and Tenant arising under this Section 4.02 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

**4.03 Landlord's and Tenant's Property.** (a) Subject to Section 4.03(d), all fixtures (other than movable trade fixtures constituting Tenant's Property), equipment (other than movable equipment constituting Tenant's Property), improvements and appurtenances attached to or built into the Premises, whether or not at the expense of Tenant, and all fixtures, equipment, improvements and appurtenances attached to or built into any other area of the Building by or on behalf of Tenant (collectively, "Fixtures"), shall be and remain a part of the Building and shall not be removed by Tenant except as expressly provided to the contrary in this Lease. All Fixtures shall be the property of Tenant during the Term and, upon expiration or earlier termination of this Lease, unless expressly provided otherwise in this Lease, shall become the property of Landlord.

(b) All movable partitions, business and trade fixtures, machinery and equipment, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises or elsewhere in the Building (collectively, "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided, that if any Tenant's Property is removed, Tenant shall repair any damage to the Premises or to the Building resulting from the installation and/or removal thereof. Notwithstanding the foregoing, subject to Section 4.03(d), any equipment or other property paid for with any allowance or credit granted by Landlord to Tenant shall not be considered Tenant's Property and shall be and remain a part of the Premises or such other location in the Building in which such equipment or other property is located, shall, upon the expiration or earlier termination of this Lease, be the property of Landlord and shall not be removed by Tenant.

(c) At or before the Expiration Date, or within 30 days after any earlier termination of this Lease, Tenant, at Tenant's expense, shall remove Tenant's Property from the Building (except such items thereof as Landlord shall have expressly permitted in writing to remain, which shall become the property of Landlord), and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property. Any items of Tenant's Property which remain in the Building after the Expiration Date, or more than 30 days after an earlier termination of this Lease, may, at the option of Landlord, be deemed to have been abandoned, and may be retained by Landlord as Landlord's property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

(d) Landlord, by notice given to Tenant at any time prior to or within 60 days after the Expiration Date or any earlier termination of this Lease, may require Tenant, notwithstanding Section 4.03(a), to remove all or any Specialty Installations. If Landlord shall give such notice, then Tenant, at Tenant's expense, on or prior to the later of (x) the Expiration Date and (y) the date that is 30 days after the giving of such notice by Landlord, shall either (i) remove the Specialty Installations from the Premises and the Building, repair and restore the Premises and the Building to the condition existing prior to installation thereof and repair any damage to the Premises or to the Building due to such removal (such removal and repair work is collectively hereinafter referred to as the "Restoration Work") or (ii) elect by written notice to Landlord for Landlord to perform the Restoration Work, in which event Tenant shall pay or reimburse Landlord for the costs thereof within 30 days after demand therefor. Notwithstanding the foregoing, Tenant, at the time Tenant submits to Landlord Tenant's plans and specifications for any Alterations, may request in writing that Landlord specifically identify any Specialty Installations shown on Tenant's plans and specifications which Tenant must remove at the end of the Term (and restore the Premises and the Building to its condition existing prior to the installation of such Specialty Installations). The term "Specialty Installations" shall mean installations consisting of vaults, safes, poured concrete or similar raised flooring, internal staircases, vertical and horizontal risers, dumbwaiters, vertical transportation systems, roof equipment, supplemental HVAC equipment, kitchen facilities (but not pantry facilities), private bathrooms, other installations which penetrate the slabs of the Premises, Alterations which affect the Building's curtain wall (provided that Restoration Work in connection with any such Alterations affecting the Building's curtain wall shall be performed by Landlord at Tenant's expense), installations in areas of the Building other than the Premises and any other installations which are not customary installations for tenants occupying premises comparable to the Premises for general, administrative and executive office use as permitted under this Lease. The provisions of this Section 4.03(d) shall survive the expiration or other termination of this Lease.

**4.04 Access and Changes to Building.** (a) Landlord reserves the right, at any time, to make changes in or to the Project as Landlord may deem necessary or desirable, and Landlord shall have no liability to Tenant therefor, provided any such change does not deprive Tenant of access to the Premises through a Building lobby and the Elevators and does not affect the first-class nature of the Project. Landlord may install and maintain pipes, fans, ducts, wires and conduits within or through the walls, floors or ceilings of the Premises; provided, that the same (i) are installed within the interior of the walls of the Premises or the floors or ceilings thereof, at Landlord's sole cost and expense or, if installed adjacent to the interior walls of the Premises or the floors or ceilings of the Premises, if appropriate, shall be located in boxed enclosures and adequately furred and (ii) shall not, except to a *de minimis* extent, reduce the rentable square footage of the Premises or the ceiling height, provided, however, that to the extent there are alternative locations for the pipes and conduits outside of the Premises that provide the same service, do not cost more (by more than a *de minimis* amount, unless Tenant, after being advised of the incremental cost, agrees to pay such cost to Landlord) and do not inconvenience or otherwise adversely affect Landlord or other existing or future tenants of the Building, Tenant shall have the right to require Landlord to use such alternative locations. Landlord shall restore, at Landlord's cost, to substantially the same condition existing prior to such work by Landlord, any damage to any Fixtures or Tenant's Property caused by the performance of any such installation or maintenance work by Landlord. In exercising its rights under this Section 4.04, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Premises for the ordinary conduct of Tenant's business (but without any obligation to utilize overtime or premium pay labor except as otherwise provided under Section 3.02(e), applied *mutatis mutandis*). Tenant shall not have any easement or other right in or to the use of any door or any passage or any concourse or any plaza connecting the Building with any other building or to any public conveniences, and the use of such doors, passages, concourses, plazas and conveniences may, without notice to Tenant, be regulated or discontinued at any time by Landlord; provided, that Tenant shall at all times have reasonable access to the Premises through the Elevators and the applicable Building lobby.

(b) Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Building, including, without limitation, exterior Building walls, core corridor walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, base building telecommunications or technical rooms, electrical closets, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises, are reserved to Landlord and are not part of the Premises. Subject to Section 12.04, Landlord reserves the right to change the name or address of the Project or any portion thereof at any time and from time to time. Upon reasonable prior notice to Landlord, Landlord will reasonably cooperate with Tenant (at no cost or liability to Landlord) to coordinate access to floors immediately above and below the Premises during Tenant's Initial Work and during the performance of any subsequent Alteration so that Tenant may perform certain aspects of Tenant's Initial Work (e.g., installing certain plumbing, duct or cabling work) or such subsequent Alteration, as applicable. Any such access shall be subject to the express terms and conditions of each tenant's lease relating to such space immediately above and/or below the Premises and any requirements imposed by any such tenant pursuant to such tenant's lease in connection with such access and the indemnity provisions set forth in Section 6.12(b) shall apply in connection therewith.

(c) Landlord shall have no liability to Tenant if at any time any windows of the Premises are either temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building (or permanently darkened or obstructed if required by Law) or covered by any translucent material for the purpose of energy conservation, or if any part of the Project, other than the Premises, is temporarily or permanently closed or inoperable; provided that the same does not deprive Tenant of access to the Premises through a Building lobby and the Elevators. If at any time the windows of the Premises are temporarily darkened or obstructed as permitted in the immediately preceding sentence, Landlord shall, to the extent permitted by Law or applicable governmental authority, perform such repairs, maintenance, alterations or improvements as reasonably promptly as practicable and as reasonably necessary to re-open the same, and, Landlord shall use commercially reasonable efforts to minimize the period of time during which such windows are temporarily darkened or obstructed.

(d) Landlord and persons authorized by Landlord shall have the right, upon reasonable prior notice to Tenant (except in an emergency and which, in the case of non-emergency inspections or work to be performed by Landlord within the Premises, shall be at least 24 hours in advance), to enter the Premises (together with any necessary materials and/or equipment), to inspect or perform such work as Landlord may reasonably deem necessary or to exhibit the Premises to prospective purchasers or, during the last 18 months of the Term, to prospective tenants, or for any other purpose as Landlord may reasonably deem necessary or desirable. Notwithstanding the foregoing, Landlord shall not bring and/or store more materials and equipment in the Premises to perform such work than are reasonably necessary at any time. Tenant shall have the right to have a representative of Tenant accompany Landlord on any entry into the Premises, but Landlord's rights to conduct any such entry, and the timing of such entry, shall not be affected if Tenant shall fail to make such representative available. Landlord shall have no liability to Tenant by reason of any such entry. Landlord shall not be required to make any improvements or repairs of any kind or character to the Premises during the Term. In connection with any access to the Premises by Landlord and persons authorized by Landlord, Landlord and such persons shall exercise commercially reasonable efforts to minimize interference with Tenant's access to, and use of, the Premises for the normal conduct of Tenant's business therein.

(e) Tenant shall have the right to reasonably designate, by written notice to Landlord, certain areas of the Premises, not to exceed 3,000 rentable square feet, in the aggregate, as secure areas (each, a “Secure Area”) to which Landlord shall not have access without being accompanied by a representative of Tenant (except in the case of an emergency or when Tenant does not make a representative available upon 2 Business Days’ prior written notice); provided, that the Secured Area does not block access to base building systems or other areas of the Building to which Landlord requires regular access. Landlord shall not be required to provide cleaning services or other services which require entry to such Secure Area. Landlord shall not have liability to Tenant for any failure of Landlord to perform any of its obligations hereunder by reason of Landlord’s inability to enter any Secure Area. Notwithstanding anything in this Lease to the contrary, in no event shall the obligations of Landlord under this Section 4.04(e) in any way be construed to obligate Landlord to pay overtime or premium rates for work, materials or access to the Secured Area or any other area of the Premises, and in no event shall Landlord be deemed to be obligated to spend any greater sums of money to perform any work than it would have had to pay if Landlord, and its agents, employees and contractors had obtained access to the Secured Area.

**4.05 Repairs.** (a) Tenant shall keep the Premises (including, without limitation, all Fixtures) in good condition and, upon expiration or earlier termination of the Term, shall surrender the same to Landlord in the same condition as when first occupied, reasonable wear and tear excepted and otherwise in the condition required under Section 4.03(c). Tenant’s obligation shall include, without limitation (and notwithstanding the provisions of Section 4.05(b) below), the obligation to repair all damage caused by Tenant, its agents, employees, invitees and licensees to the equipment and other installations in the Premises or anywhere in the Building. Any maintenance, repair or replacement to the windows, the Building systems, the Building’s structural components or any areas outside the Premises and which is Tenant’s obligation to perform shall be performed by Landlord at Tenant’s reasonable expense. Tenant shall not commit or allow to be committed any waste or damage to any portion of the Premises or the Project.

(b) Subject to the second sentence of Section 4.05(a), Landlord, at Landlord’s expense (but subject to reimbursement by way of Operating Expenses to the extent includable therein), shall operate, maintain, repair and replace, if necessary, (i) all structural portions of the Building, such as, by way of example only, the roof, foundation, footings, exterior walls, load-bearing columns, ceiling and floor slabs, windows, window sills and sashes, (ii) all common and public service areas of the Building, including, without limitation, all common elevators, (iii) all Building systems serving the common and public service areas and the Premises and (iv) all fixtures located in the core restrooms in the Premises, throughout the Term, and in such a manner as is consistent with the maintenance, operation and repair standards of First Class Office Buildings; provided, that Landlord’s obligations under this Section 4.05(b) shall be limited to areas of, and installations within, the Building which Tenant is entitled to use or which otherwise serve the Premises and Landlord shall have no liability to Tenant for any failure to maintain such standards except to the extent such failure materially and adversely affects Tenant’s use and enjoyment of the Premises. Notwithstanding the foregoing, if any damage repaired by Landlord under this Section 4.05(b) is caused by Tenant or any of Tenant’s agents, employees, invitees and licensees, such repair shall be performed by Landlord at Tenant’s reasonable expense.

**4.06 Compliance with Laws; Hazardous Materials.** (a) Tenant shall comply with all laws, ordinances, rules, orders and regulations (present, future, ordinary, extraordinary, foreseen or unforeseen) of any governmental, public or quasi-public authority and of the New York Board of Fire Underwriters and any other entity performing similar functions, at any time duly in force (collectively “Laws”), the application of which is attributable to, any work, installation, occupancy, use or manner of use by Tenant of the Premises or any part thereof, except as expressly set forth in the next sentence. Nothing contained in this Section 4.06 shall require Tenant to make any (i) structural changes or changes to the base building systems or (ii) changes to the core bathrooms (but not any private, executive or other bathrooms installed by Tenant, with respect to which Tenant shall be responsible for compliance with Laws as set forth in the first sentence of this paragraph) in the Premises, unless, in the case of either of clauses (i) or (ii), the same are necessitated by reason of Tenant’s performance of any Alterations, Tenant’s manner of use of the Premises or the use by Tenant of the Premises for purposes other than normal and customary ordinary office purposes. Tenant shall procure and maintain all licenses and permits required for its business. Notwithstanding the provisions of Section 4.06(a), Tenant, at its own cost and expense, may contest, in any manner permitted by Law, the validity or the enforcement of any Laws with which Tenant is required to comply pursuant to this Lease; provided that (A) any such contest and/or Tenant’s non-compliance with any such Laws shall not (I) subject any Landlord Indemnified Party to (x) criminal prosecution, (y) material fine or (z) any other civil liability that would adversely affect the operation of the Building or the rights of other tenants or occupants of the Building, (II) subject the Building (or any portion thereof) to lien or sale or cause, or be reasonably likely to cause, the same to be condemned or vacated or (III) be in violation of any Superior Mortgage or Superior Lease; (B) Tenant shall first deliver to Landlord a surety bond issued by a surety company of recognized responsibility, or other security reasonably satisfactory to Landlord, indemnifying and protecting Landlord and any Superior Mortgagee or Superior Lessor against any loss, cost, liability, damage or expenses (including, without limitation, interest and penalties and reasonable attorneys’ fees and disbursements) which could arise by reason of such non-compliance, which bond or other security (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be released by Landlord promptly upon resolution of such contest; and (C) Tenant shall promptly, diligently and continuously prosecute such contest and shall keep Landlord informed, on a regular basis, of the status of such contest.

(b) Landlord, at Landlord’s expense (but subject to reimbursement by way of Operating Expenses to the extent includable therein), shall comply or cause compliance with all Laws affecting the public and common areas of the Building, the Building systems or the Premises or the use and occupancy thereof (except (x) as expressly set forth in Section 4.06(a) above and (y) that Landlord shall have no liability to Tenant for any failure to so comply or cause compliance except to the extent such failure materially and adversely affects Tenant’s use and enjoyment of the Premises) subject to Landlord’s right to contest and defer compliance with such Laws pursuant to appropriate proceedings, provided that Landlord shall not have the right to defer such compliance if (i) such non-compliance or contest shall prevent Tenant from lawfully occupying the Premises for the use permitted hereunder or (ii) noncompliance threatens the safety of persons or property. On the Possession Date, Landlord shall deliver the Premises to Tenant in substantial compliance with all applicable Laws (including Laws with respect to Hazardous Materials) and free of Hazardous Materials (as hereinafter defined). If, during the Term, Landlord or its employees, contractors or agents install, use, release, store or place any Hazardous Materials in or about (1) the Premises or (2) to the extent same materially and adversely affects Tenant’s use and enjoyment of the Premises, the Building or the Project, in any case in violation of applicable Laws, then Landlord shall be obligated to remove and dispose of such Hazardous Materials in compliance with all Laws (including, without limitation, any Laws with respect to Hazardous Materials).

(c) (i) Tenant shall not cause or permit Hazardous Materials to be used, transported, stored, released, handled, produced or installed in, on or from the Premises or the Building other than customary office, cleaning and/or maintenance and/or construction supplies brought into, used in and/or kept upon the Premises or the Building if and to the extent permitted pursuant to Laws and in addition, with respect to construction supplies, if and to the extent used in accordance with good construction practices. The term “Hazardous Materials” means any substance or material defined by any Law that is now or may hereafter be applicable, as “hazardous,” “toxic” or words of similar import.

(ii) In the event of a breach of the provisions of this Section 4.06(c), Landlord shall, in addition to all of its rights and remedies under this Lease and pursuant to Laws, require Tenant to remove any such Hazardous Materials from the Premises or the Building in the manner prescribed for such removal by applicable Laws, and the indemnity provisions set forth in Section 6.12(b) shall apply in connection therewith.

**4.07 Tenant Advertising.** Tenant shall not use, and shall cause each of its affiliates not to use, the name or likeness of the Building or the Project in any advertising (by whatever medium) without Landlord’s consent (not to be unreasonably withheld or delayed), provided, however, that Tenant may use the name and address of the Building on its stationary and in advertisements for identification purposes only.

**4.08 Right to Perform Tenant Covenants.** If Tenant fails to perform any of its obligations under this Lease, Landlord, any Superior Lessor or any Superior Mortgagee (each, a “Curing Party”) may perform the same at the expense of Tenant (a) immediately and without notice in the case of emergency or in case such failure may result in a violation of any Law or in a cancellation of any insurance policy maintained by Landlord; provided, that Landlord agrees to provide such notice as is reasonably practicable under the circumstances (which the parties agree may be no notice) in the event of the circumstances described in this clause (a) and (b) in any other case if such failure continues beyond any applicable notice and grace period. If a Curing Party performs any of Tenant’s obligations under this Lease, Tenant shall pay to Landlord (as Additional Charges) the costs thereof (including all reasonable fees and costs, including reasonable legal fees and disbursements, incurred by such Curing Party in connection therewith), together with interest at the Interest Rate from the date incurred by the Curing Party until paid by Tenant, within 30 days after receipt by Tenant of a statement as to the amounts of such costs, accompanied by invoices or other reasonable supporting documentation. If the Curing Party effects such cure by bonding any lien which Tenant is required to bond or otherwise discharge (after the giving of any required notice and the expiration of any applicable grace periods), Tenant shall obtain and substitute a bond for the Curing Party’s bond and shall reimburse the Curing Party for the cost of the Curing Party’s bond. “Interest Rate” means the lesser of (i) the base rate from time to time announced by Citibank, N.A. (or, if Citibank, N.A. shall not exist or shall cease to announce such rate, such other bank in New York, New York, as shall be designated by Landlord in a notice to Tenant) to be in effect at its principal office in New York, New York plus 3% and (ii) the maximum rate permitted by law.

**4.09 Telecommunications; Shaft Space.** (a) Tenant shall be responsible, at its sole cost and expense, for bringing telecommunication service, data wiring service and cable television service to the Premises. Landlord shall provide two separate points of entry for Tenant's telecommunications requirements from such point of entry to the Premises and from the Premises to the roof of the Building. Each separate sleeve within the Building core shall accommodate two (2) 2" conduits for Tenant's telecommunications requirements as shown on Exhibit U. At Tenant's request, Landlord shall install two (2) 2" conduits in each sleeve and Tenant shall reimburse Landlord for the out-of-pocket costs actually incurred by Landlord in connection with such installation within 30 days after rendition of a bill therefor. Any installation made by Tenant in such shaft space, including core drilling and the installation of any conduit or wiring, shall be performed at Tenant's sole cost and expense, in accordance with all Laws and the Rules and Regulations, and shall constitute an Alteration under this Lease. Tenant shall indemnify and save harmless Landlord from and against all loss, damage, liability, cost and expense of any nature (including, without limitation, reasonable attorneys' fees and expenses) by reason of accidents, damage, injury or loss to any and all persons and property, or either, whosoever or whatsoever to the extent resulting from or arising in connection with Tenant's installation, use, maintenance and removal of the equipment that Tenant installs in the shaft space and Tenant's insurance in respect of the Premises shall include coverage for any losses incurred in connection with such installation, use, operation, maintenance and removal. Upon the expiration of the Term, all of such fixtures and equipment installed in the shaft space by Tenant shall be removed by Tenant at its sole cost and expense.

(b) Tenant shall have the right, at Tenant's sole cost and expense, to contract for telecommunications service from any reputable carrier which serves the area, subject to Landlord's reasonable consent (which consent may include, without limitation, the condition that such service provider enter into a license agreement with Landlord which is reasonably satisfactory to Landlord), and Landlord shall reasonably cooperate with Tenant and any such service provider to whom Landlord consents in connection therewith (including, without limitation, by providing to any such service provider reasonable access to the Building and reasonably direct routes of travel within the Building), without out-of-pocket cost, expense or liability to Landlord. Landlord shall not charge Tenant for any service provider's entry into the Building or use of shaft space. Subject to the terms of this Lease, any cable or satellite television company with whom Tenant contracts in accordance with the provisions of this Section 4.09(b) may provide television services to all floors of the Premises.

(c) Landlord shall not be responsible for any delays occasioned by failure of a telecommunications company to furnish any such services.

## ARTICLE 5

### Assignment and Subletting

**5.01**     **Assignment; Etc.** (a) Subject to the further provisions of this Article 5, neither this Lease nor the term and estate hereby granted, nor any part hereof or thereof, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise, and neither the Premises, nor any part thereof, shall be subleased, be licensed, be used or occupied by any person or entity other than Tenant or be encumbered in any manner by reason of any act or omission on the part of Tenant, and no rents or other sums receivable by Tenant under any sublease of all or any part of the Premises shall be assigned or otherwise encumbered, without the prior consent of Landlord. Notwithstanding any provision of this Article 5 to the contrary, but subject nevertheless to the provisions of Sections 5.01(b) and (c) below, in no event shall Tenant be entitled to sublease any portion of the Premises or assign this Lease or license any of Tenant's rights hereunder (other than to Affiliates of Tenant) prior to the earlier of (i) the date upon which initial leases have been entered into for 92.5% of the space in the Building and (ii) the date that is 18 months after the Rent Commencement Date (the "Initial Lease-Up Restriction"); provided, that (1) the Initial Lease-Up Restriction shall only apply to the extent Landlord then has available or reasonably expects within the next 4 months to have available, comparable space in the Building for a comparable term and (2) the Initial Lease-Up Restriction shall not apply to an Excluded Sublease (as hereinafter defined). Landlord agrees to endeavor to notify Tenant reasonably promptly after initial leases have been entered into for 92.5% of the space in the Building. Except as hereinafter expressly provided, the dissolution or direct or indirect transfer of control of Tenant (however accomplished including, by way of example, the addition of new partners or members or withdrawal of existing partners or members, or transfers of interests in distributions of profits or losses of Tenant, issuance of additional stock, redemption of stock, stock voting agreement, or change in classes of stock) shall be deemed an assignment of this Lease regardless of whether the transfer is made by one or more transactions, or whether one or more persons or entities hold the controlling interest prior to the transfer or afterwards. An agreement under which another person or entity becomes responsible for all or a portion of Tenant's obligations under this Lease shall be deemed an assignment of this Lease. No assignment or other transfer of this Lease and the term and estate hereby granted, and no subletting of all or any portion of the Premises shall relieve Tenant of its liability under this Lease or of the obligation to obtain Landlord's prior consent to any further assignment, other transfer or subletting. Any attempt to assign this Lease or sublet all or any portion of the Premises in violation of this Article 5 shall be null and void. Notwithstanding anything to the contrary contained in this Section 5.01(a), the direct or indirect transfer of shares or other equity interests in Tenant shall not constitute an assignment of this Lease and shall not require Landlord's consent if accomplished through a recognized stock exchange or through the public "over-the-counter" securities market.

(b)       Notwithstanding Section 5.01(a), without the consent of Landlord or application of the Initial Lease-Up Restriction or Section 5.05, this Lease may be assigned to (i) an entity created by merger, reorganization or recapitalization of or with Tenant or (ii) a purchaser of all or substantially all of Tenant's membership interests, stock or assets; provided, in the case of both clause (i) and clause (ii), that (A) Landlord shall have received a notice of such assignment from Tenant, (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease, (C) such assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (D) the assignee is a reputable entity of good character and, immediately after giving effect to such assignment, shall have an aggregate net worth (computed in accordance with GAAP) at least equal to \$300,000,000.00.

(c) Notwithstanding Section 5.01(a), without the consent of Landlord or application of the Initial Lease-Up Restriction or Section 5.05, Tenant may assign this Lease or sublet all or any part of the Premises to an Affiliate of Tenant; provided, that (i) Landlord shall have received a notice of such assignment or sublease from Tenant; and (ii) in the case of any such assignment, (A) the assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease. "Affiliate" means, as to any designated person or entity, any other person or entity which controls, is controlled by, or is under common control with, such designated person or entity. "Control" (and with correlative meaning, "controlled by" and "under common control with") means ownership or voting control, directly or indirectly, of 35% or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question.

(d) Tenant may from time to time, subject to all of the provisions of this Lease but without the consent of Landlord or application of the Initial Lease-Up Restriction, permit portions of the Premises to be used or occupied under so-called "desk sharing" arrangements by a Desk Space User; provided, that (i) any such use or occupancy of desk or office space shall be without the installation of demising walls separating such desk or office space, any separate entrance or any signage identifying such Desk Space User, (ii) at any time during the Term, the aggregate of the rentable square footage then used by Desk Space Users pursuant to this Section 5.01(d) shall not exceed 10% of the rentable square feet of the Premises, (iii) each Desk Space User shall use the Premises in accordance with all of the provisions of this Lease, and only for the use expressly permitted pursuant to this Lease, (iv) in no event shall the use of any portion of the Premises by a Desk Space User create or be deemed to create any right, title or interest of such Desk Space User in any portion of the Premises or this Lease, (v) any such "desk sharing" arrangement shall terminate automatically upon the termination of this Lease, (vi) Tenant shall receive no rent or other payment or consideration for the use or occupancy of any space in the Premises by any Desk Space User in excess of an allocable share of the Rent reserved hereunder, (vii) each Desk Space User shall be engaged in a business or activity which is in keeping with standards of the Building and (viii) any such desk sharing arrangement is for a valid business purpose and not to circumvent the provisions of this Article 5. Upon request of Landlord, Tenant shall advise Landlord of any Desk Space Users in the Premises, and shall provide (A) a description of the nature and character of the business being conducted in the Premises by such Desk Space User and (B) the rentable square feet of the Premises occupied by such Desk Space User, together with a copy of the agreement, if any, relating to the use or occupancy of such portion of the Premises by such Desk Space User. "Desk Space User" means a bona fide client, service provider, or other person or entity with which Tenant has a significant, ongoing business relationship.

**5.02 Landlord's Right of First Offer.** (a) If Tenant desires to assign this Lease or sublet all or part of the Premises for all or substantially all of the then-remaining Term (other than in accordance with Sections 5.01(b) or (c) or pursuant to an Excluded Sublease), Tenant shall give to Landlord notice (" Tenant's Offer Notice ") thereof, specifying (i) in the case of a proposed subletting, the location of the space to be sublet (including the specific area to be demised for sublet on any floor of the Premises) and the term of the subletting of such space, (ii) (A) in the case of a proposed assignment, Tenant's good faith offer of the consideration Tenant desires to receive or pay for such assignment (including any concessions Tenant desires to offer to the proposed assignee) or (B) in the case of a proposed subletting for all or substantially all of the then-remaining Term, Tenant's good faith offer of the rent which Tenant desires to receive for such proposed subletting (including fixed rent, additional rent including proportionate shares, base years and/or base amounts for any escalation rent to be paid on account of PILOT, Impositions, taxes and operating expenses, electricity charges and other pass-through expenses and the amount of any work allowance, rent abatement or other tenant inducement, and any other proposed terms required by Landlord to calculate the Net Effective Rental Tenant desires to receive for such proposed subletting) and (iii) the proposed assignment or sublease commencement date. An " Excluded Sublease " means Tenant's right to sublease up to one (1) full floor of the Premises at any time in one or more transactions.

(b) Tenant's Offer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at Landlord's option, (i) sublease such space from Tenant (if the proposed transaction is a sublease of all or part of the Premises for all or substantially all of the then-remaining Term), (ii) terminate this Lease (if the proposed transaction is an assignment or a sublease of all or substantially all of the Premises or a sublease of a portion of the Premises which, when aggregated with other subleases then in effect, covers all or substantially all of the Premises, in either case, for substantially all of the then-remaining Term), or (iii) terminate this Lease with respect to the space covered by the proposed sublease (if the proposed transaction is a sublease of part of the Premises for all or substantially all of the then-remaining Term). Said option may be exercised by Landlord by notice to Tenant within 30 days after a Tenant's Offer Notice, together with all information required pursuant to Section 5.02(a), has been given by Tenant to Landlord. For the purposes of this Section 5.02 "substantially all of the then-remaining Term" shall mean that the term of the proposed subletting shall expire within the last twelve (12) months of the then Term.

(c) If Landlord exercises its option under Section 5.02(b)(ii) to terminate this Lease, then this Lease shall terminate on the later of (i) the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice and (ii) the proposed assignment or sublease commencement date specified in the applicable Tenant's Offer Notice, and all Rent shall be paid and apportioned to such termination date.

(d) If Landlord exercises its option under Section 5.02(b)(iii) to terminate this Lease with respect to the space covered by a proposed sublease for all or substantially all of the then-remaining Term, then (i) this Lease shall terminate with respect to such part of the Premises on the later of (x) the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice and (y) the proposed sublease commencement date specified in the applicable Tenant's Offer Notice; (ii) from and after such termination date the Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises prior to such termination and (iii) Tenant shall pay to Landlord, within 30 days after demand and completion, the reasonable costs incurred by Landlord in demising separately such part of the Premises and in complying with any Laws relating to such demise.

(e) If Landlord exercises its option under Section 5.02(b)(i) to sublet the space Tenant desires to sublet, such sublease to Landlord or its designee (as sublessee) shall be in form and substance reasonably satisfactory to Landlord at the lower of (i) the rental rate per rentable square foot of Fixed Rent and Additional Charges then payable pursuant to this Lease or (ii) the rental rate per rentable square foot set forth in the applicable Tenant's Offer Notice with respect to such sublet space, and shall be for the term set forth in the applicable Tenant's Offer Notice (except that such term shall commence on the date that is 60 days after Landlord's receipt of the applicable Tenant's Offer Notice if such date is later than the proposed commencement date set forth in such Tenant's Offer Notice), and:

(A) shall be subject to all of the terms and conditions of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section 5.02(e);

(B) shall be upon the same terms and conditions as those contained in the applicable Tenant's Offer Notice (including all rent abatements and other tenant inducements set forth therein) and otherwise on the terms and conditions of this Lease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section 5.02(e);

(C) shall permit the sublessee, without Tenant's consent, freely to assign such sublease or any interest therein or to sublet all or any part of the space covered by such sublease and to make any and all alterations and improvements in the space covered by such sublease; provided, that (1) Tenant shall have no removal, restoration or repair obligations under Section 4.03 hereof with respect to such alterations and improvements in such space made by such sublessee and (2) the sublessee shall be subject to such restoration obligations as are set forth in the applicable Tenant's Offer Notice;

(D) shall provide that any assignee or further sublessee of Landlord or its designee may, at the election of Landlord, make alterations, decorations and installations in such space or any part thereof, any or all of which may be removed, in whole or in part, by such assignee or sublessee, at its option, prior to or upon the expiration or other termination of such sublease, provided that (1) such assignee or sublessee, at its expense, shall repair any damage caused by such removal, (2) Tenant shall have no removal, restoration or repair obligations under Section 4.03 hereof with respect to such alterations, decorations and installations in such space made by such assignee or sublessee and (3) Landlord or its designee shall remain subject to such restoration obligations as are set forth in the applicable Tenant's Offer Notice; and

(E) shall provide that (1) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (2) any assignment or subletting by Landlord or its designee (as the sublessee) may be for any purpose or purposes that Landlord shall deem appropriate, (3) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to demise separately the subleased space and to comply with any Laws relating to such demise, and (4) at the expiration of the term of such sublease, Tenant shall accept the space covered by such sublease in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve such space in good order and condition and to such restoration obligations as are set forth to be imposed on such sublessee in the applicable Tenant's Offer Notice. If Landlord is unable to give Tenant possession of the space covered by such sublease at the expiration of the term of the sublease by reason of the holding over or retention of possession of any tenant or other occupant through Landlord, then, provided Tenant otherwise has surrendered the balance of the Premises to Landlord as required under this Lease, Tenant shall be deemed to have delivered possession of the Premises to Landlord upon the Expiration Date and shall not be deemed a holdover under this Lease.

If Landlord shall enter into a sublease pursuant to its option under Section 5.02(b)(i), Tenant shall be released from all obligations and liabilities under this Lease to the extent pertaining to the space subleased by Landlord that accrue from and after the commencement date of such sublease through the expiration date or earlier termination date of such sublease to the extent, and only to the extent, Landlord is obligated to perform such obligations or Landlord has assumed such liabilities, as the case may be, pursuant to the terms of such sublease to Landlord.

(f) In the case of a proposed sublease, Tenant shall not sublet any space to a third party (i) at a Net Effective Rental which is less (on a per rentable square foot basis) than 90% of the Net Effective Rental (on a per rentable square foot basis) specified in Tenant's Offer Notice with respect to such space or (ii) on terms which include different proportionate shares, base years and/or base amounts for any escalation rent or (iii) for a term commencing later than 9 months after the date of the proposed commencement date set forth in Tenant's Offer Notice, without, in any such case, complying once again with all of the provisions of this Section 5.02 and re-offering such space to Landlord at such lower rental or on such terms. In the case of a proposed assignment, Tenant shall not assign this Lease to a third party (i) on economic terms (including any consideration paid or received by Tenant and any concessions granted by Tenant) that differ, on a net effective basis, by more than 10% from the economic terms (including any consideration paid or received by Tenant and any concessions granted by Tenant) specified in Tenant's Offer Notice or (ii) on terms including an effective date occurring later than 9 months after the date of the proposed effective date set forth in Tenant's Offer Notice, without, in either case, complying once again with all of the provisions of this Section 5.02 and re-offering to assign this Lease to Landlord on such terms. "Net Effective Rental" means, with respect to any desired or actual sublease, one year's worth of the amortized cash flow which would be derived from such sublease, determined by spreading the Net Present Rent Value of such sublease ratably on a monthly basis over the term of such desired or actual sublease using the Interest Rate in effect as of the date of Tenant's Offer Notice. "Net Present Rent Value" means, with respect to any such sublease, the net present value, determined as of the desired or actual commencement date of such desired or actual sublease, using a discount rate of the Interest Rate in effect as of the date of Tenant's Offer Notice, of the aggregate of all rent and additional rent (other than any escalation rent calculated by determining increases over a base year or base amount, which shall be addressed pursuant to clause (ii) above of this Section 5.02(f)) payable to Tenant under the desired or actual sublease, discounted from the date that any such payment would have been made under such desired or actual sublease to the commencement date of such desired or actual sublease, after deducting therefrom the amount of all tenant inducements (such as, by way of example only, direct payments, work allowances, work letters and rent abatements) that are (or will be) granted to the subtenant thereunder, discounted from the date that such tenant inducements were to have been given to the commencement date of such desired or actual sublease.

(g) If Landlord does not timely exercise any of Landlord's options under this Section 5.02, and if Tenant has not within 270 days after the giving of the applicable Tenant's Offer Notice entered into a binding agreement to sublease or assign (which sublease or assignment shall be conditioned upon Landlord's consent thereto), then Tenant shall not sublet any space to a third party or assign this Lease to a third party (other than pursuant to Sections 5.01(b) or (c)) without complying once again with all of the provisions of this Section 5.02 and re-offering such space to Landlord.

**5.03** Assignment and Subletting Procedures. (a) If (x) Tenant delivers to Landlord a Tenant's Offer Notice with respect to any proposed assignment of this Lease or subletting of all or part of the Premises and Landlord does not timely exercise any of its options under Section 5.02, and Tenant thereafter desires to assign this Lease or sublet the space specified in Tenant's Offer Notice or (y) Tenant desires to enter into an Excluded Sublease, Tenant shall notify Landlord (a "Transfer Notice") of such desire, which notice shall be accompanied by (i) a copy of the proposed general form of assignment or sublease and all related agreements, or an agreed term sheet which does not have to be signed by Tenant and the proposed subtenant or assignee, (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, (iii) current financial information with respect to the proposed assignee or subtenant, including without limitation, its most recent financial statements and (iv) such other information as Landlord may reasonably request, and Landlord's consent to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided that:

(i) In Landlord's reasonable judgment the proposed assignee or subtenant will use the Premises in a manner that (A) is in keeping with the then standards of the Building, (B) is limited to the use expressly permitted under this Lease, and (C) will not violate any negative covenant as to a particular use contained in any other lease of space in the Building notice of which has been previously delivered to Tenant (and provided that general office uses may not be so prohibited).

(ii) The proposed assignee or subtenant is, in Landlord's judgment, a reputable person or entity with sufficient financial worth considering the responsibility involved.

(iii) To the extent Landlord then has available or reasonably expects within the next 5 months to have available, comparable space in the Building for a comparable term, neither the proposed assignee or sublessee, nor any affiliate of such assignee or sublessee, is then a tenant or occupant of any part of the Building, provided, that this clause (iii) shall not apply to an Excluded Sublease.

(iv) To the extent Landlord then has available or reasonably expects within the next 5 months to have available, comparable space in the Building for a comparable term, the proposed assignee or sublessee is not a person with whom Landlord is then negotiating or has within the prior 6 months negotiated to lease space in the Building, provided, that this clause (iv) shall not apply to an Excluded Sublease.

(v) There shall not be more than (A) 4 occupants (including Tenant) on each full floor of the Premises, or more than one subtenant on any partial floor included in the Premises and (B) 6 occupants in the entire Premises.

(vi) Tenant shall reimburse Landlord within 30 days after demand for any reasonable costs incurred by Landlord in connection with said assignment or sublease, including, without limitation, the costs of making investigations as to the acceptability of the proposed assignee or subtenant, and legal costs incurred in connection with the granting of any requested consent.

(b) Landlord shall, within 30 days following receipt of a Transfer Notice from Tenant, advise Tenant of Landlord's approval or disapproval of such proposed assignment or sublease. If Landlord shall fail to approve or disapprove such proposed assignment or sublease within such 30 day period, Tenant may give to Landlord a notice of such failure which shall contain a legend in not less than 14 point font bold upper case letters as follows: "**FAILURE TO APPROVE OR DISAPPROVE THE PROPOSED [ASSIGNMENT/SUBLEASE] WITHIN 5 BUSINESS DAYS SHALL RESULT IN LANDLORD'S DEEMED APPROVAL OF SUCH [ASSIGNMENT/SUBLEASE]**", and, if Landlord shall fail to approve or disapprove such proposed assignment or sublease within such 5 Business Day period, Landlord shall be deemed to have consented to the assignment or sublease in question. If Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver the assignment or sublease to which Landlord consented within 90 days after the giving of such consent, then Tenant shall again comply with this Article 5 before assigning this Lease or subletting all or part of the Premises.

**5.04 General Provisions.** (a) If this Lease is assigned, whether or not in violation of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof are sublet or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected against Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 5.01(a), or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease.

(b) No assignment or transfer shall be effective until the assignee delivers to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee assumes Tenant's obligations under this Lease effective as of the date of such assignment. Prior to the effective date of such assignment, the assignee shall deliver to Landlord evidence that the assignee, as Tenant hereunder, has complied with the requirements of Sections 7.02 and 7.03.

(c) Notwithstanding any assignment or transfer, whether or not in violation of this Lease, and notwithstanding the acceptance of any Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant and each successor Tenant shall remain fully liable for the payment of the Rent and the performance of all of Tenant's other obligations under this Lease. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant shall not be discharged, released or impaired in any respect by any agreement made by Landlord extending the time to perform, or otherwise modifying, any of the obligations of Tenant under this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of Tenant under this Lease; provided, that in the case of any modification of this Lease made after the date of an assignment or transfer (other than pursuant to Section 5.01(b) or Section 5.01(c)), if such modification increases or enlarges the obligations of Tenant, other than to a *de minimis* extent, then any prior Tenant under this Lease shall not be liable under or bound by such increase or enlargement to which it has not consented (but shall continue to be liable under this Lease as though such modification were never made).

(d) Each subletting by Tenant shall be subject to the following:

(i) No subletting shall be for a term (including any renewal or extension options contained in the sublease) ending later than one day prior to the Expiration Date.

(ii) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until there has been delivered to Landlord, both (A) an executed counterpart of such sublease, and (B) a certificate of insurance evidencing that (x) Landlord is an additional insured under the insurance policies required to be maintained by occupants of the Premises pursuant to Section 7.02, and (y) there is in full force and effect, the insurance otherwise required by Sections 7.02 and 7.03.

(iii) Subject to Section 5.06, each sublease shall provide that it is subject and subordinate to this Lease, and that in the event of termination, reentry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be liable for, subject to or bound by any item or matter of the type that a Successor Landlord is not so liable for, subject to or bound by in the case of an attornment by Tenant to a Successor Landlord under Section 6.01(a).

(e) Each sublease shall provide that the subtenant may not assign its rights thereunder or further sublet the space demised under the sublease, in whole or in part, without Landlord's consent and without complying with all of the terms and conditions of this Article 5, including, without limitation, Section 5.04, which for purposes of this Section 5.04(e) shall be deemed to be appropriately modified to take into account that the transaction in question is an assignment of the sublease or a further subletting of the space demised under the sublease, as the case may be. Notwithstanding the foregoing, any direct subtenant of Tenant (but not an indirect subtenant of Tenant (i.e., a subtenant of a subtenant)) subleasing at least 50% of the rentable square footage of any floor of the Premises shall be permitted to further sublease the portion of the Premises sublet by such subtenant, in whole or in part, or to assign its sublease, under the same terms and conditions as Tenant would be subject to under this Lease, except that the rights granted to Tenant under Section 5.06 shall not be available to any subtenant.

(f) Tenant shall not publicly advertise the availability of the Premises or any portion thereof as sublet space or by way of an assignment of this Lease, without first obtaining Landlord's consent (but Tenant may list with reputable brokers or include in trade or industry computerized listing services the Premises without Landlord's approval), which consent shall not be unreasonably withheld or delayed provided that Tenant shall in no event advertise a proposed rental rate for all or any portion of the Premises or any description of such a rental rate.

**5.05 Assignment and Sublease Profits.** (a) If the aggregate of the amounts payable as fixed rent and as additional rent on account of PILOT, Additional Tax Payments, Impositions, Taxes, Operating Expenses and electricity by a subtenant under a sublease of any part of the Premises (excluding a sublease made pursuant to Sections 5.01(c)) and the amount of any Other Sublease Consideration payable to Tenant by such subtenant, whether received in a lump-sum payment or otherwise, shall be in excess of Tenant's Basic Cost therefor at that time then, promptly after the collection thereof, Tenant shall pay to Landlord in monthly installments as and when collected, as Additional Charges, 50% of such excess. Tenant shall deliver to Landlord within 60 days after the end of each calendar year and within 60 days after the expiration or earlier termination of this Lease a statement specifying each sublease in effect during such calendar year or partial calendar year, the rentable area demised thereby, the term thereof and a computation in reasonable detail showing the calculation of the amounts paid and payable by the subtenant to Tenant, and by Tenant to Landlord, with respect to such sublease for the period covered by such statement. "Tenant's Basic Cost" for sublet space at any time means the sum of (i) the portion of the Fixed Rent and Recurring Additional Charges which is attributable to the sublet space, plus (ii) the amount payable by Tenant on account of electricity in respect of the sublet space, plus (iii) the amount of any costs reasonably incurred by Tenant in making changes in the layout and finish of the sublet space for the subtenant and any work allowance granted by Tenant to the subtenant, plus (iv) the amount of any actual reasonable brokerage commissions (it being agreed that 150% of one full standard commission on a sublease transaction involving co-brokers is a reasonable commission) and reasonable legal fees or any other marketing costs associated with subleasing the space paid by Tenant in connection with the sublease. "Other Sublease Considerations" means all sums paid for the furnishing of services by Tenant and the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property (excluding any of the same which were part of Tenant's Initial Work) less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof, amortized or depreciated in accordance with GAAP.

(b) Upon any assignment of this Lease (other than an assignment made pursuant to Sections 5.01(b) or (c)), Tenant shall pay to Landlord 50% of the Assignment Consideration received by Tenant for such assignment, after deducting therefrom customary and reasonable closing expenses. “Assignment Consideration” means an amount equal to all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment (including, without limitation, sums paid for the furnishing of services by Tenant and the sale or rental of Tenant’s fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property (excluding any of the same which were part of Tenant’s Initial Work), less, in the case of a sale thereof, the then net unamortized or undepreciated cost thereof, amortized or depreciated in accordance with GAAP).

(c) At Landlord’s option, exercisable by written notice to Tenant at any time, the provisions of Section 5.05(a) and Section 5.05(b) shall be automatically null and void.

**5.06 Eligible Subtenant: Non-Disturbance.** (a) Landlord shall, within 30 days after Tenant’s written request (which request shall be accompanied by a fully executed counterpart of the Eligible Sublease and such other information and certifications as Landlord may reasonably request in order to determine that the conditions of this Section 5.06 have been satisfied), deliver to Tenant and the subtenant under the Eligible Sublease (the “Eligible Subtenant”) a non-disturbance agreement substantially in the form attached hereto as Exhibit V (a “Landlord’s Non-Disturbance Agreement”). Following the subtenant’s execution and delivery of the Landlord’s Non-Disturbance Agreement, Landlord shall promptly execute and deliver a counterpart to the subtenant. Landlord’s actual reasonable out-of-pocket costs and expenses in connection with the foregoing (including, without limitation, reasonable attorney’s fees) shall be paid by Tenant within 30 days after receipt of an invoice therefor.

(b) As used herein, “Eligible Sublease” shall mean a direct sublease which (A) is between Tenant and a subtenant which is not an affiliate of Tenant, and, as of the execution of the Eligible Sublease, has a net worth, computed in accordance with GAAP, equal to or greater than 30 times the sum of the annual Fixed Rent then payable hereunder and all of the Additional Charges payable for the preceding calendar year, in each case, allocable to the portion of the Premises that is the subject of the Eligible Sublease (without giving effect to any free rent or rent abatement), (B) demises at least one full floor of the Building that is part of the Premises (x) of contiguous space beginning with (and which must include) the highest or lowest full floor of the Premises, (C) if a Landlord Non-Disturbance Agreement has theretofore been delivered by Landlord with respect to an Eligible Sublease which is then in effect, (x) demises at least one (1) or more full floors of the Premises which are contiguous to the floors demised pursuant to such existing Eligible Sublease and (y) has a stated expiration date which is the same day as such existing Eligible Sublease and (D) has an initial sublease term (i.e., not including any renewals) of at least 5 years (or, if less than 5 years remain in the Term, the remaining balance of the Term less one day).

Notwithstanding anything to the contrary herein contained, it is understood and agreed that Landlord shall have no obligation to deliver a Landlord’s Non-Disturbance Agreement during the continuance of any default which continues beyond applicable notice and cure periods.

**5.07 Disputes.** Any dispute between Landlord and Tenant arising under this Article 5 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

## **ARTICLE 6**

### **Subordination; Default; Indemnity**

**6.01 Subordination.** (a) Subject to the provisions of Section 6.01(c), this Lease is subject and subordinate to each mortgage (a “Superior Mortgage”) and each underlying lease (a “Superior Lease”) which may now or hereafter affect all or any portion of the Project or any interest therein and to each document or instrument to which any such Superior Mortgage or Superior Lease is subordinate. The lessor under a Superior Lease is called a “Superior Lessor” and the mortgagee under a Superior Mortgage is called a “Superior Mortgagee”. Tenant shall execute, acknowledge and deliver any commercially reasonable instrument reasonably requested by Landlord, a Superior Lessor or Superior Mortgagee to evidence such subordination, but no such instrument shall be necessary to make such subordination effective (provided, that such instrument shall not violate the conditions described in clauses (i) through (iv) of the immediately succeeding sentence). Tenant shall execute any amendment of this Lease requested by a Superior Mortgagee or a Superior Lessor, provided such amendment shall not (i) reduce or extend the Term, (ii) increase the Rent, (iii) reduce the area of the Premises, or (iv) other than to a *de minimis* extent, increase Tenant’s obligations or decrease Tenant’s rights under this Lease. In the event of the enforcement by a Superior Mortgagee of the remedies provided for by law or by such Superior Mortgage, or in the event of the termination or expiration of a Superior Lease, Tenant, upon request of such Superior Mortgagee, Superior Lessor or any person succeeding to the interest of such mortgagee or lessor (each, a “Successor Landlord”), shall automatically become the tenant of such Successor Landlord without change in the terms or provisions of this Lease (it being understood that Tenant shall, if requested, enter into a new lease on terms identical to those in this Lease); provided, that any Successor Landlord shall not be (i) liable for any act, omission or default of any prior landlord (including, without limitation, Landlord), except to the extent that any such non-monetary default of an obligation of Landlord under this Lease continues after the date that Successor Landlord succeeds to Landlord’s interest in the Project and Successor Landlord has been given written notice and a reasonable opportunity to cure same; (ii) liable for the return of any moneys paid to or on deposit with any prior landlord (including, without limitation, Landlord), except to the extent such moneys or deposits are delivered to such Successor Landlord; (iii) subject to any offset, claims or defense that Tenant might have against any prior landlord (including, without limitation, Landlord); (iv) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including, without limitation, Landlord); (v) bound by any covenant to perform or complete any construction in connection with the Project or the Premises or to pay any sums to Tenant in connection therewith; (vi) bound by any obligation to make any payment to Tenant; or (vii) bound by any waiver or forbearance under, or any amendment, modification, abridgment, cancellation or surrender of, this Lease made without the consent of such Successor Landlord. Upon request by such Successor Landlord, Tenant shall execute and deliver an instrument or instruments, reasonably requested by such Successor Landlord (at no out-of-pocket cost to Tenant other than any legal fees Tenant may incur in connection therewith), confirming the attornment provided for herein, but no such instrument shall be necessary to make such attornment effective.

(b) Tenant shall give each Superior Mortgagee and each Superior Lessor a copy of any notice of default served upon Landlord, provided that Tenant has been notified of the address of such mortgagee or lessor. If Landlord fails to cure any default as to which Tenant is obligated to give notice pursuant to the preceding sentence within the time provided for in this Lease, then each such mortgagee or lessor shall have an additional 30 days after receipt of such notice within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such 30 days, any such mortgagee or lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including, without limitation, commencement of foreclosure proceedings or eviction proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated and Tenant shall not exercise any other rights or remedies under this Lease or otherwise while such remedies are being so diligently pursued. Nothing herein shall be deemed to imply that Tenant has any right to terminate this Lease or any other right or remedy, except as may be otherwise expressly provided for in this Lease. Notwithstanding the foregoing, to the extent that any of the provisions of this Section 6.01(b) are inconsistent with or contradictory to any term or provision of an SNDA Tenant shall have entered into with any Superior Mortgagee or Superior Lessor, the terms and provisions of such SNDA shall govern with respect to such Superior Mortgagee or Superior Lessor.

(c) Notwithstanding the provisions of Section 6.01(a), (i) Tenant's obligation to subordinate its interest in this Lease to any future Superior Mortgage is expressly conditioned upon Tenant's receipt from the Superior Mortgagee of a subordination, non-disturbance and attornment agreement substantially in the form annexed hereto as Exhibit M-1 or, with respect to a Superior Mortgage in favor of the IDA or otherwise in connection with financing relating to the PILOT Agreement, substantially in the form annexed hereto as Exhibit M-3 and (ii) Tenant's obligation to subordinate its interest in this Lease to any future Superior Lease is expressly conditioned upon Tenant's receipt from the Superior Lessor of a recognition, non-disturbance and attornment agreement substantially in the form annexed hereto as Exhibit M-2 or, with respect to a Superior Lease with the IDA or otherwise in connection with financing relating to the PILOT Agreement, substantially in the form annexed hereto as Exhibit M-3 (any such agreement with a Superior Mortgagee or a Superior Lessor substantially in the form annexed hereto as Exhibit M-1, Exhibit M-2 or Exhibit M-3, as applicable, an "SNDA"). If such Superior Mortgagee or Superior Lessor executes and delivers an SNDA, and Tenant either fails or refuses to execute and deliver such SNDA within 10 Business Days following Landlord's delivery of such SNDA, this Lease shall be subject and subordinate to such Superior Mortgage or Superior Lease and Landlord shall have no further obligation to obtain an SNDA from such Superior Mortgagee or Superior Lessor.

(d) Landlord represents to Tenant that, as of the date of this Lease, there are no Superior Mortgages or Superior Leases affecting the Project except for Superior Mortgages and Superior Leases in connection with a financing arrangement with the IDA.

**6.02     Estoppel Certificate**. Each party shall, at any time and from time to time, within 10 Business Days after request by the other party, execute and deliver to the requesting party (or to such person or entity as the requesting party may designate) a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the Possession Date, the Rent Commencement Date, Expiration Date, the rentable square footage of each floor and each partial floor of the Premises as determined in accordance with Article 1 of this Lease, and the dates to which the Fixed Rent and Additional Charges have been paid and stating whether or not, to the actual knowledge of the party signing such statement, the other party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which such party has knowledge, it being intended that any such statement shall be deemed a representation and warranty to be relied upon by the party to whom such statement is addressed. Each party also shall include or confirm in any such statement such other information concerning this Lease as the other party may reasonably request.

**6.03     Default**. This Lease and the term and estate hereby granted are subject to the limitation that:

(a)       if Tenant defaults in the payment of any Rent, and such default continues for (i) with respect to Fixed Rent and/or Additional Tax Payments, Impositions Payments, Operating Payments and either PILOT Payments or Tax Payments, as applicable, 5 Business Days after Landlord gives to Tenant a notice specifying such default or (ii) with respect to Additional Charges other than those described in clause (i) above, 10 Business Days after Landlord gives to Tenant a notice specifying such default, or

(b)       if Tenant defaults in the keeping, observance or performance of any covenant or agreement contained in this Lease (other than a default of the character referred to in Sections 6.03(a), (c), (d), or (e)), and if such default continues and is not cured within 30 days after Landlord gives to Tenant a notice specifying the same, or, in the case of a default which for causes beyond Tenant's reasonable control cannot with due diligence be cured within such period of 30 days, if Tenant shall not during such period, (i) advise Landlord of Tenant's intention duly to institute all steps necessary to cure such default and (ii) institute and thereafter diligently prosecute to completion all steps necessary to cure the same, or

(c)       if this Lease or the estate hereby granted would, by operation of law or otherwise, devolve upon or pass to any person or entity other than Tenant, except as expressly permitted by Article 5, or

(d)       if Tenant shall abandon the Premises (and the fact that any of Tenant's Property remains in the Premises shall not be evidence that Tenant has not abandoned the Premises), or

(e)       if a default shall occur and have been cured, and if a similar default shall occur and have been cured, then if a third similar default shall occur within 365 days after the occurrence of the first such default, whether or not such third default is cured within the applicable grace period, or

(f)       if Tenant fails to deliver to Landlord the Letter of Credit within 30 days of the date of this Lease in accordance with Section 2.11(a),

then, in any of such cases, in addition to any other remedies available to Landlord at law or in equity, Landlord shall be entitled to give to Tenant a notice of intention to terminate this Lease at the expiration of 5 Business Days from the date of the giving of such notice, and, in the event such notice is given, this Lease and the term and estate hereby granted shall terminate upon the expiration of such 5 Business Days with the same effect as if the last of such 5 Business Days were the Expiration Date, but Tenant shall remain liable for damages as provided herein or pursuant to law. Landlord agrees that any notice of default required to be delivered under clauses (a) and (b) above shall (i) specify the applicable default and (ii) if monetary in nature, specify the amount required to be paid to cure such default.

**6.04 Re-entry by Landlord.** If Tenant defaults in the payment of any Rent and such default continues for 5 Business Days following notice from Landlord specifying such default, or if this Lease shall terminate as in Section 6.03 provided, Landlord or Landlord's agents may immediately or at any time thereafter re-enter into or upon the Premises, or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law, without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises. The words "re-enter" and "re-entering" as used in this Lease are not restricted to their technical legal meanings. Upon such termination or re-entry, Tenant shall pay to Landlord any Rent then due and owing (in addition to any damages payable under Section 6.05).

**6.05 Damages.** If this Lease is terminated under Section 6.03, or if Landlord re-enters the Premises under Section 6.04, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

(a) a sum which, at the time of such termination, represents the then value of the excess, if any, of (1) the aggregate of the Rent which, had this Lease not terminated, would have been payable hereunder by Tenant for the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date over (2) the aggregate fair rental value of the Premises for the same period (for the purposes of this clause (a) the amount of Recurring Additional Charges shall, for each calendar year ending after such termination or re-entry, be deemed to be an amount equal to the amount of Recurring Additional Charges payable by Tenant for the calendar year immediately preceding the calendar year in which such termination or re-entry shall occur), or

(b) sums equal to the Rent that would have been payable by Tenant through and including the Expiration Date had this Lease not terminated or had Landlord not re-entered the Premises, payable upon the due dates therefor specified in this Lease; provided, that if Landlord shall relet all or any part of the Premises for all or any part of the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this Lease and of re-entering the Premises and of securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Premises for new tenants, brokers' commissions, and all other expenses properly chargeable against the Premises and the rental therefrom in connection with such reletting, it being understood that any such reletting may be for a period equal to or shorter or longer than said period; provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord under this Lease, (ii) in no event shall Tenant be entitled, in any suit for the collection of damages pursuant to this Section 6.05(b), to a credit in respect of any net rents from a reletting except to the extent that such net rents are actually received by Landlord on account of any period that is the subject of such suit, (iii) if the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot rentable area basis shall be made of the rent received from such reletting and of the expenses of reletting, and (iv) Landlord shall have no obligation to so relet the Premises and Tenant hereby waives any right Tenant may have, at law or in equity, to require Landlord to so relet the Premises.

Suit or suits for the recovery of any damages payable hereunder by Tenant, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall require Landlord to postpone suit until the date when the Term would have expired but for such termination or re-entry.

**6.06 Other Remedies.** (a) Nothing contained in this Lease shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Anything in this Lease to the contrary notwithstanding, during the continuation of any default by Tenant, Tenant shall not be entitled to exercise any rights or options, or to receive any funds or proceeds being held, under or pursuant to this Lease.

(b) Anything contained in this Lease to the contrary notwithstanding, in no event shall Tenant or Landlord be entitled to claim or recover any consequential, exemplary or punitive damages from the other in any action arising under this Lease (except as set forth in Section 6.10).

**6.07 Right to Injunction.** In the event of any breach or threatened breach by Tenant or Landlord of any of its obligations under this Lease, the other party shall also have the right of injunction or, subject to the terms of this Lease, to invoke any other right or remedy available at law or in equity. The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may lawfully be entitled, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not herein provided for.

**6.08 Certain Waivers.** Tenant waives and surrenders all right and privilege that Tenant might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease after Tenant is dispossessed or ejected therefrom by process of law or under the terms of this Lease or after any termination of this Lease. Tenant also waives the provisions of any law relating to notice and/or delay in levy of execution in case of any eviction or dispossession for nonpayment of rent, and the provisions of any successor or other law of like import. Landlord and Tenant each waive trial by jury in any action in connection with this Lease.

**6.09 No Waiver.** Failure by either party to declare any default immediately upon its occurrence or delay in taking any action in connection with such default shall not waive such default but such party shall have the right to declare any such default at any time thereafter. Any amounts paid by Tenant to Landlord may be applied by Landlord, in Landlord's discretion, to any items then owing by Tenant to Landlord under this Lease. Receipt by Landlord of a partial payment shall not be deemed to be an accord and satisfaction (notwithstanding any endorsement or statement on any check or any letter accompanying any check or payment) nor shall such receipt constitute a waiver by Landlord of Tenant's obligation to make full payment. No act or thing done by Landlord or its agents shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord and by each Superior Lessor and Superior Mortgagee whose lease or mortgage provides that any such surrender may not be accepted without its consent.

**6.10 Holding Over.** If Tenant holds over without the consent of Landlord after expiration or termination of this Lease, Tenant shall pay as holdover rental for each month of the holdover tenancy an amount equal to the Applicable Percentage multiplied by the greater of (i) the fair market rental value of the Premises for such month (as reasonably determined by Landlord) or (ii) the Rent which Tenant was obligated to pay for the month immediately preceding the end of the Term; and (c) if such holdover continues for at least 75 days, be liable to Landlord for and indemnify Landlord against (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant, (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant and (iii) any claim for damages by any New Tenant. No holding over by Tenant after the Term shall operate to extend the Term, and the acceptance of any rent paid by Tenant pursuant to this Section 6.10 shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding. The provisions of this Section 6.10 shall be deemed to be an "agreement expressly providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York. Tenant expressly waives, for itself and for any person or entity claiming through or under Tenant, any rights which Tenant or any such person or entity may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions of this Lease. "Applicable Percentage" means (x) for any period of such holdover commencing after the expiration or termination of this Lease through the 90<sup>th</sup> such day, 150% and (y) thereafter, 200%.

**6.11 Attorneys' Fees.** If any action or proceeding is brought by Landlord or Tenant to enforce its rights under this Lease, the prevailing party in such action shall be entitled to collect its reasonable attorneys' fees and costs of suit from the other party.

**6.12 Nonliability and Indemnification.** (a) Neither Landlord, any Superior Lessor or any Superior Mortgagee, nor any partner, director, officer, shareholder, principal, board member, agent or employee of Landlord, any Superior Lessor or any Superior Mortgagee (whether disclosed or undisclosed), shall be liable to Tenant for (i) any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, nor shall the aforesaid parties be liable for any loss of or damage to property of Tenant or of others entrusted to employees of Landlord; provided, that, except to the extent of the release of liability and waiver of subrogation provided in Section 7.03 hereof, the foregoing shall not be deemed to relieve Landlord of any liability to the extent resulting from the negligence or willful misconduct of Landlord, its agents or employees in the operation or maintenance of the Premises or the Building, (ii) any loss, injury or damage described in clause (i) above caused by other tenants, occupants or persons in, upon or about the Building, or caused by operations in construction of any private, public or quasi-public work, or (iii) even if due to negligence or willful misconduct, consequential damages arising out of any loss of use of the Premises or any equipment, facilities or other Tenant's Property therein or otherwise.

(b) Subject to the provisions of Section 7.03, Tenant shall indemnify and hold harmless Landlord, all Superior Lessors and all Superior Mortgagees and each of their respective partners, members, directors, officers, shareholders, principals, board members, agents and employees (each, a "Landlord Indemnified Party"), from and against any and all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created, in or about the Premises, (ii) any act, omission or negligence of Tenant or any person claiming through or under Tenant or any of their respective partners, directors, officers, agents, employees or contractors, (iii) any accident, injury or damage occurring in, at or upon the Premises (or outside the Premises if arising from or in connection with Tenant's installations in, or use of, areas outside the Premises), (iv) any default by Tenant in the performance of any of Tenant's obligations under this Lease, (v) the performance of Tenant's Initial Work and (vi) any brokerage commission or similar compensation claimed to be due by reason of any proposed subletting or assignment by Tenant (irrespective of the exercise by Landlord of any of the options in Section 5.02(b)); in each case, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 applies) or willful misconduct of any Landlord Indemnified Party. If any action or proceeding is brought against any Landlord Indemnified Party by reason of any such claim, Tenant, upon notice from such Landlord Indemnified Party shall resist and defend such action or proceeding by counsel reasonably satisfactory to such Landlord Indemnified Party, and counsel selected by Tenant's insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Landlord Indemnified Party.

(c) Subject to the provisions of Section 7.03, Landlord shall indemnify and hold harmless Tenant and Tenant's partners, members, directors, officers, shareholders, principals, agents and employees (each, a "Tenant Indemnified Party"), from and against any and all claims arising from or in connection with (i) any negligence or willful misconduct of Landlord or its agents, servants or employees in connection with the operation or management of the common areas of the Building and (ii) any default by Landlord in the performance of any of Landlord's obligations under this Lease, in each case together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 applies) or willful misconduct of any Tenant Indemnified Party. If any action or proceeding is brought against any Tenant Indemnified Party by reason of any such claim, Landlord, upon notice from such Tenant Indemnified Party, shall resist and defend such action or proceeding by counsel reasonably satisfactory to such Tenant Indemnified Party, and counsel selected by Landlord's insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Tenant Indemnified Party.

## ARTICLE 7

### Insurance; Casualty; Condemnation

**7.01 Compliance with Insurance Standards.** (a) Tenant shall not violate, or permit the violation of, any condition imposed by any insurance policy then issued in respect of the Project and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises, which would subject Landlord, any Superior Lessor or any Superior Mortgagee to any liability or responsibility for personal injury or death or property damage, or which would increase any insurance rate in respect of the Project over the rate which would otherwise then be in effect or which would result in insurance companies of good standing refusing to insure the Project in amounts reasonably satisfactory to Landlord, or which would result in the cancellation of, or the assertion of any defense by the insurer in whole or in part to claims under, any policy of insurance in respect of the Project, provided, however, that in no event shall the mere use of the Premises for customary and ordinary office purposes, as opposed to the manner of such use, constitute a breach by Tenant of the provisions of this Section 7.01.

(b) If, by reason of any failure of Tenant to comply with this Lease, the premium(s) on Landlord's insurance on the Project shall be higher than they otherwise would be, Tenant shall reimburse Landlord, within 30 days after demand, for that part of such premium(s) attributable to such failure on the part of Tenant. A schedule or "make up" of rates for the Project or the Premises, as the case may be, issued by any insurance boards making rates for insurance for the Project or the Premises, as the case may be, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to the Project or the Premises, as the case may be.

**7.02 Tenant's Insurance.** Tenant shall maintain at all times during the Term insurance coverage meeting the requirements set forth in Sections (A) and (C) of Exhibit J attached hereto. The limits of such insurance shall not limit the liability of Tenant. Tenant's insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of Landlord. Landlord's insurance shall apply in excess of all insurance coverage required of Tenant in accordance with this Section 7.02 and Exhibit J, whether such insurance is primary, contingent or on any other basis, and regardless of whether such Tenant's insurance coverage is valid or collectible. Tenant shall deliver to Landlord and all Additional Insureds (as defined in Exhibit J), prior to Tenant having access to the Building (pursuant to the provisions of Section 4.01(b) or otherwise), fully paid-for policies or certificates of insurance for all such required insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent. An Accord Form Certificate of Insurance (Accord 25 for Liability and Accord 27 for Property) or its equivalent shall be deemed reasonably satisfactory to Landlord. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall endeavor to deliver to Landlord and any Additional Insureds such renewal policy or a certificate thereof at least 30 days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in New York State (except the Products and Completed Operations Liability policy, which shall not be required to be issued by a company authorized to do business in New York State) and rated by Best's Insurance Reports or any successor publication of comparable standing as A/VIII or better or the then equivalent of such rating, and all such policies shall contain a provision whereby the same cannot be canceled, allowed to lapse or modified unless Landlord and any Additional Insureds are given at least 30 days prior written notice of such cancellation, lapse or modification. Tenant shall cooperate with Landlord in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required to recover any such insurance moneys. Landlord may from time to time require that the amount of the insurance to be maintained by Tenant under this Section 7.02 be increased and/or that Tenant provide additional insurance coverage, so that the insurance maintained by Tenant adequately protects Landlord's interest; provided, that any such increased amounts or additional coverage shall not be materially in excess of the amounts and coverage landlords of similar First Class Office Buildings require their tenants to maintain. In the event Tenant fails to maintain the limits or coverages as required herein, Landlord may obtain such insurance as an agent of the Tenant without prior notice. Any premiums paid by Landlord in connection with such insurance obtained by Landlord together with interest thereon at the Interest Rate from the date paid by Landlord until the date reimbursed by Tenant shall be payable by Tenant to Landlord.

**7.03 Subrogation Waiver.** Landlord and Tenant shall each include in each of its insurance policies (insuring the Building in case of Landlord, and insuring Tenant's Property and Fixtures in the case of Tenant, against loss, damage or destruction by fire or other casualty) a waiver of the insurer's right of subrogation against the other party during the Term or, if such waiver should be unobtainable or unenforceable, (a) an express agreement that such policy shall not be invalidated if the insured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty or (b) any other form of permission for the release of the other party. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged. Each party hereby (x) releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property occurring during the Term to the extent to which it is, or is required to be, insured under a policy or policies containing a waiver of subrogation or permission to release liability and (y) waives all rights of recovery against the other party, whether under subrogation or otherwise, for any deductibles. Nothing contained in this Section 7.03 shall be deemed to relieve either party of any duty imposed elsewhere in this Lease to repair, restore or rebuild or to nullify any abatement of rents provided for elsewhere in this Lease. All waivers and releases for the benefit of Landlord pursuant to this Section 7.03 shall be deemed to apply to and for the benefit of, and, if applicable, shall be obtained with respect to, The Related Companies, L.P., Oxford Hudson Yards LLC, Mitsui Fudosan America, Inc., MFA 55 HY LLC, 55 Hudson Yards Member LLC and any of such entities' and Landlord's officers, agents, and employees, in addition to, and with the same effect as, the application of such provisions to Landlord.

**7.04 Condemnation.** (a) If there shall be a total taking of the Building or the Premises in condemnation proceedings or by any right of eminent domain, this Lease and the term and estate hereby granted shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be prorated and paid as of such termination date. If there shall be a taking of any material (in Landlord's reasonable judgment) portion of the Building (whether or not the Premises are affected by such taking), then Landlord may terminate this Lease and the term and estate granted hereby by giving notice to Tenant within 60 days after the date of taking of possession by the condemning authority. If there shall be a taking of the Premises of such scope (but in no event less than 20% thereof) that Tenant would, in Tenant's reasonable judgment, be unable to operate the untaken part of the Premises in a functionally equivalent manner to the manner in which Tenant operated such untaken part of the Premises prior to the taking then Tenant may terminate this Lease and the term and estate granted hereby by giving notice to Landlord within 60 days after the date of taking of possession by the condemning authority. If either Landlord or Tenant shall give a termination notice as aforesaid, then this Lease and the term and estate granted hereby shall terminate as of the date of such notice and all Rent shall be prorated and paid as of such termination date. In the event of a taking of the Premises which does not result in the termination of this Lease (i) the term and estate hereby granted with respect to the taken part of the Premises shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be appropriately abated for the period from such date to the Expiration Date and (ii) Landlord shall with reasonable diligence restore the remaining portion of the Premises (exclusive of Tenant's Property) as nearly as practicable to its condition prior to such taking.

(b) In the event of any taking of all or a part of the Building, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including, without limitation, any award made for the value of the estate vested by this Lease in Tenant or any value attributable to the unexpired portion of the Effective Period, and Tenant hereby assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award; provided, that nothing shall preclude Tenant from making a separate claim in any such condemnation proceeding for the value of all improvements, alterations and additions made to the Premises by Tenant (less the amount of the Work Allowance), and for the value of Tenant's furniture, fixtures, machinery and equipment contained in the Premises and for expenses (including moving expenses, and attorney's fees) incurred by Tenant as a result of such proceeding, provided the same does not include any value of the estate vested by this Lease in Tenant or of the unexpired portion of the Effective Period and does not reduce the amount available to Landlord or materially delay the payment thereof.

(c) If all or any part of the Premises shall be taken for a limited period, Tenant shall be entitled, except as hereinafter set forth, to that portion of the award for such taking which represents compensation for the use and occupancy of the Premises, for the taking of Tenant's Property and for moving expenses, and Landlord shall be entitled to that portion which represents reimbursement for the cost of restoration of the Premises. This Lease shall remain unaffected by such taking and Tenant shall continue to be responsible for all of its obligations under this Lease and shall continue to pay in full all Rent when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award which represents compensation for the use and occupancy of the Premises shall be apportioned between Landlord and Tenant as of the Expiration Date. Any award for temporary use and occupancy for a period beyond the date to which the Rent has been paid shall be paid to, held and applied by Landlord as a trust fund for payment of the Rent thereafter becoming due.

(d) In the event of any taking which does not result in termination of this Lease, (i) Landlord, whether or not any award shall be sufficient therefor, shall proceed with reasonable diligence to repair the remaining parts of the Building and the Premises (other than those parts of the Premises which constitute Fixtures and Tenant's Property) to substantially their former condition to the extent that the same may be feasible (subject to reasonable changes which Landlord deems desirable) and so as to constitute a complete and rentable Building and Premises and (ii) Tenant, whether or not any award shall be sufficient therefor, shall proceed with reasonable diligence to repair the remaining parts of the Premises which constitute Fixtures and Tenant's Property, to substantially their former condition to the extent that the same may be feasible, subject to reasonable changes which shall be deemed Alterations.

**7.05** Casualty. (a) If the Building or the Premises shall be partially or totally damaged or destroyed by fire or other casualty (each, a "Casualty") and if this Lease is not terminated as provided below, then (i) Landlord shall repair and restore the Building and the Premises (excluding all Fixtures and Tenant's Property) with reasonable dispatch (but Landlord shall not be required to perform the same on an overtime or premium pay basis) after notice to Landlord of the Casualty and the collection of the insurance proceeds attributable to such Casualty and (ii) Tenant shall repair and restore in accordance with Section 4.02 all Fixtures and Tenant's Property with reasonable dispatch after Landlord shall have substantially completed repair and restoration of the Building and the Premises (excluding all Fixtures and Tenant's Property); provided, that Tenant shall repair and restore in accordance with Section 4.02 hereof all Tenant's Property, Fixtures and improvements and betterments with reasonable dispatch immediately after the Casualty to the extent (x) such repair and restoration is necessary to permit Landlord to commence, perform and complete repair and restoration of the Building and the Premises or (y) in accordance with good construction practice, such work should be performed prior to, or concurrently with, repair and restoration of the Building and the Premises.

(b) If all or part of the Premises shall be rendered Untenantable by reason of a Casualty, the Fixed Rent and Recurring Additional Charges shall be abated in the proportion that the Untenantable area of the Premises bears to the total area of the Premises, for the period from the date of the Casualty to the earlier to occur of (i) 120 days after the date on which Landlord shall have performed its obligations under Section 7.05(a)(i), (ii) the date the Untenantable area of the Premises (or any portion thereof) is made tenantable (it being understood and agreed that the term "tenantable" for purposes of this Section 7.05 shall mean that the Premises (or any portion thereof) is in a condition which permits Tenant to occupy the same for general, administrative and executive office uses) (provided, that if the Premises (or a portion thereof) would have been tenantable at an earlier date but for Tenant having failed diligently to prosecute repairs or restoration, then the Premises (or such portion thereof) shall be deemed to have been made tenantable on such earlier date and the abatement (with respect to such portion, if applicable) shall cease) or (iii) the date Tenant or any subtenant reoccupies the Untenantable area of the Premises (or a portion thereof) for the ordinary conduct of business (in which case the Fixed Rent and the Additional Charges allocable to such reoccupied portion shall be payable by Tenant from the date of such occupancy). Landlord's determination of the date the Premises (or a portion thereof) is tenantable shall be controlling unless Tenant disputes same by notice to Landlord within 10 Business Days after such determination by Landlord, and pending resolution of such dispute, Tenant shall pay Rent in accordance with Landlord's determination. Nothing contained in this Section 7.05 shall relieve Tenant from any liability that may exist as a result of any Casualty.

(c) If by reason of a Casualty (i) the Building shall be so damaged or destroyed (whether or not the Premises are damaged or destroyed) that repair or restoration thereof shall require more than 365 days or the expenditure of more than 30% percent of the full insurable value of the Building (which, for purposes of this Section 7.05(c), shall mean replacement cost less the cost of footings, foundations and other structures below the street and first floors of the Building) immediately prior to the Casualty and Landlord shall give notices terminating leases or has terminated leases (including this Lease) for office space in the Building affecting not less than 75% of the then leased rentable square footage of the office space in the Building or (ii) more than 30% of the Premises shall be damaged or destroyed (as estimated in either such case by a reputable contractor, architect or engineer designated by Landlord), then in any such case Landlord may terminate this Lease by notice given to Tenant within 120 days after the Casualty.

(d) (i) Supplementing the foregoing provisions of this Section 7.05, within 90 days after Landlord has actual knowledge of any Casualty rendering 50% or more of the Premises Untenantable, Landlord shall deliver to Tenant an estimate prepared by a reputable contractor selected by Landlord, having at least 10 years' experience in such matters, setting forth such contractor's estimate as to the time and cost reasonably required to repair such damage in order to make the Premises (or the Untenantable portion thereof) no longer Untenantable. If the period set forth in any such estimate exceeds 365 days from the date of such Casualty, Tenant may terminate this Lease by notice to Landlord given not later than 30 days following Tenant's receipt of such estimate (time being of the essence). If Tenant shall timely exercise such election, this Lease and the term and estate granted hereby shall terminate on the 60th day after notice of such election is given by Tenant, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the terms of this Lease. If the time period set forth in said estimate exceeds 365 days from the date of such Casualty and Tenant has not elected to terminate this Lease as set forth above, and for any reason whatsoever (other than Unavoidable Delay or delay caused by Tenant or Tenant's employees, agents or contractors) Landlord shall not complete the repair and restoration that Landlord is obligated to perform hereunder within 90 days after the date set forth in the estimate as the date by which the repair and restoration should reasonably be completed, then Tenant shall have the further right to terminate this Lease by notice to Landlord given not later than 30 days following the last day of such 90-day period after the date set forth in the estimate (time being of the essence) and this Lease shall terminate on the 30th day after such notice is given by Tenant.

(ii) Notwithstanding the foregoing, if a Casualty rendering 50% or more of the Premises Untenantable occurs during the last 18 months of the Term and Landlord's restoration work would take more than 180 days to substantially complete (excluding restoration of any of Tenant's Property, Fixtures or Tenant's improvements and betterments), either party may terminate this Lease by notice given to the other within 60 days after the date of the Casualty (time of the essence), in which event this Lease shall terminate on the date specified in such notice. If either party timely gives such notice, the Term shall expire upon 30 days after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord in accordance with the provisions of this Lease. If a party fails timely to deliver such notice as aforesaid, such party shall be deemed to have waived its right to give such termination notice and such party shall have no further right to terminate this Lease under this Section 7.05(d).

(e) Landlord shall not carry any insurance on any Tenant's Property or Fixtures and shall not be obligated to repair or replace Tenant's Property or Fixtures. Tenant shall look solely to Tenant's insurance for recovery of any damage to or loss of Tenant's Property or Fixtures. Tenant shall notify Landlord promptly of any Casualty in the Premises.

(f) Any dispute between Landlord and Tenant arising under this Article 7 shall be resolved by arbitration conducted in accordance with the provisions of Section 8.09.

(g) This Section 7.05 shall be deemed an express agreement governing any damage or destruction of the Premises by fire or other casualty, and Section 227 of the New York Real Property Law providing for such a contingency in the absence of an express agreement, and any other law of like import now or hereafter in force, shall have no application.

**7.06 Landlord's Insurance.** Landlord shall obtain and keep in full force and effect throughout the Term insurance against loss or damage by fire and other casualty to the Building as may be insurable under then available standard forms of "all-risk" insurance policies, with limits consistent with property insurance maintained by prudent owners of First Class Office Buildings. Landlord shall obtain and keep in full force and effect a commercial general liability insurance policy in respect of the Building and the conduct or operation of business therein, with limits consistent with liability insurance maintained by prudent owners of First Class Office Buildings.

## **ARTICLE 8**

### **Miscellaneous Provisions**

**8.01 Notice.** All notices, demands, consents, approvals, advices, waivers or other communications which may or are required to be given by either party to the other under this Lease (each, "Notice") shall be in writing and shall be delivered by (a) personal delivery, (b) the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) a nationally recognized overnight courier, in each case addressed as follows:

If to Landlord:

One Hudson Yards Owner LLC  
c/o The Related Companies, L.P.  
60 Columbus Circle, 19th Floor  
New York, New York 10023  
Attention: L. Jay Cross and Andrew L. Cantor

with a copy to each of the following:

Oxford Hudson Yards LLC  
450 Park Avenue, Suite 900  
New York, New York 10022  
Attention: Dean J. Shapiro

Oxford Properties Group\*  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 900  
Toronto, Ontario M5J 2J2 Canada  
Attention: Chief Legal Counsel

*\* and, if different than the address set forth above, to the address posted from time to time as the corporate head office of Oxford Properties Group on the website [www.oxfordproperties.com](http://www.oxfordproperties.com) to the attention of the Chief Legal Officer*

The Related Companies, L.P.  
60 Columbus Circle, 19th Floor  
New York, New York 10023  
Attention: Amy Arentowicz, Esq.

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10022  
Attention: Robert J. Sorin, Esq.

Mitsui Fudosan America  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Ian J. Bentata and Sean McSweeney

If to Tenant:

prior to the date on which Tenant occupies its demised premises at 10 Hudson Yards, New York, New York:

Intercept Pharmaceuticals, Inc.  
450 West 15th Street, Suite 505  
New York, New York 10011  
Attention: Bryan Yoon, Esq.

after the date on which Tenant occupies its demised premises at 10 Hudson Yards, New York, New York but prior to the date on which Tenant occupies the Premises:

Intercept Pharmaceuticals, Inc.  
10 Hudson Yards  
37th Floor  
New York, New York 10001  
Attention: Bryan Yoon, Esq.

after the date on which Tenant occupies the Premises:

Intercept Pharmaceuticals, Inc.  
55 Hudson Yards  
550 West 34th Street, 23rd Floor  
New York, New York 10001  
Attention: Bryan Yoon, Esq.

in each case, with a copy to:

Thompson Hine LLP  
335 Madison Avenue (12th Floor)  
New York, New York 10017  
Attention: Mario J. Suarez, Esq.

Either party may designate a different or an additional address or addresses for notices intended for such party from time to time by at least 5 days' notice to the other party. Notices from Landlord may be given by Landlord's managing agent, if any, or by Landlord's attorney. Notices from Tenant may be given by Tenant's attorney. Each Notice shall be deemed to have been given on the date such Notice is actually received as evidenced by a written receipt therefor, and in the event of failure to deliver by reason of changed address of which no Notice was given or refusal to accept delivery, as of the date of such failure.

**8.02 Rules and Regulations.** Tenant shall comply with, and Tenant shall cause its licensees, employees, contractors, agents and invitees to comply with, the rules of the Building set forth in Exhibit C, as the same may be reasonably modified or supplemented by Landlord from time to time for the safety, care and cleanliness of the Premises and the Building and for preservation of good order therein (the "Rules and Regulations"). Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be bound by any such modification or supplement to the Rules and Regulations that (i) imposes, except to a *de minimis* extent, any new or increased costs or financial obligations on Tenant (unless any such cost or financial obligation is the result of compliance with any Laws) or (ii) unreasonably affects the conduct of Tenant's business in the Premises. Landlord shall not be obligated to enforce the Rules and Regulations against Tenant or any other tenant or occupant of the Building or any other party, and Landlord shall have no liability to Tenant by reason of the violation by any tenant or other party of the Rules and Regulations; provided, that Landlord shall not enforce the Rules and Regulations in a manner which discriminates against Tenant. If any provision of the Rules and Regulations shall conflict with any provision of this Lease, such provision of this Lease shall govern.

**8.03 Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

**8.04 Certain Definitions.** (a) “Landlord” means only the owner, at the time in question, of the Building or that portion of the Building of which the Premises are a part, or of a lease of the Building or that portion of the Building of which the Premises are a part, so that in the event of any transfer or transfers of title to the Building or of Landlord’s interest in a lease of the Building or such portion of the Building, the transferor shall be and hereby is relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, and it shall be deemed, without further agreement, that such transferee has assumed all obligations of Landlord during the period it is the holder of Landlord’s interest under this Lease.

(b) “Landlord shall have no liability to Tenant” or words of similar import mean that Tenant is not entitled to terminate this Lease, or to claim actual or constructive eviction, partial, or total, or to receive any abatement or diminution of Rent, or to be relieved in any manner of any of its other obligations under this Lease, or to be compensated for loss or injury suffered or to enforce any other right or kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to Tenant’s use or occupancy of the Premises.

(c) “Unavoidable Delay” means Landlord’s inability to fulfill or delay in fulfilling any of its obligations under this Lease to be performed by Landlord or Landlord’s inability to make or delay in making any repairs, additions, alterations, improvements or decorations or Landlord’s inability to supply or delay in supplying any equipment or fixtures, if Landlord’s inability or delay is due to or arises by reason of accident, strikes or labor troubles, or weather conditions that render the performance of any such obligation or work unsafe or impracticable, or any cause whatsoever beyond Landlord’s reasonable control, including, without limitation, governmental preemption in connection with a national emergency or other actions of a governmental or quasi-governmental authority, Laws, shortages of materials, unavailability of labor, fuel, water, electricity or materials, or delays caused by tenants or other occupants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty, but “Unavoidable Delay” shall not include any inability or delay resulting from insufficient funds.

(d) Whenever any provision of this Lease refers to a specified amount “Subject to CPI Increases”, such amount shall be adjusted as of each anniversary of January 1, 2017. Each such adjustment shall be made by multiplying the applicable amount by the greater of (a) 1.0, or (b) a fraction, the numerator of which shall be the CPI as most recently published prior to the date of such adjustment and the denominator of which shall be the CPI for January, 2016. The term “CPI” shall mean Consumer Price Index for All Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100, or any successor to such index, appropriately adjusted, or if no such index or successor index shall be published, such similar index, appropriately adjusted, as shall reasonably be designated by Landlord and consented to by Tenant, such consent not to be unreasonably withheld, conditioned or delayed.

**8.05 Quiet Enjoyment** . Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, subject to the other terms of this Lease and to Superior Leases and Superior Mortgages, provided that this Lease is in effect.

**8.06 Limitation of Landlord's and Tenant's Personal Liability** . (a) Tenant shall look solely to Landlord's interest in the Building (including, without limitation, the rents and profits arising therefrom) for the recovery of any judgment against Landlord, and no other property or assets of Landlord or Landlord's members, partners, shareholders, principals, officers or directors, direct or indirect, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease. In no event shall Tenant bring any action against any of Landlord's members, managers, limited partners, shareholders, directors, officers and principals, direct and indirect, for any claims arising out of the Lease.

(b) No property or assets of Tenant's members, partners, shareholders, principals, officers or directors, direct or indirect, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies under or with respect to this Lease. In no event shall Landlord bring any action against any of Tenant's members, managers, limited partners, shareholders, directors, officers and principals, direct and indirect, for any claims arising out of the Lease.

**8.07 Counterclaims** . If Landlord commences any summary proceeding or action for nonpayment of Rent or to recover possession of the Premises, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding or action, unless Tenant's failure to interpose such counterclaim in such proceeding or action would result in the waiver of Tenant's right to bring such claim in a separate proceeding under applicable law.

**8.08 Survival** . All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease for a period of 3 years, except as expressly provided in this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to Recurring Additional Charges and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**8.09 Certain Remedies; Arbitration** . (a) If Tenant requests Landlord's consent and Landlord fails or refuses to give such consent, except where Landlord acted in bad faith and in an arbitrary and capricious manner in failing or refusing to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction or arbitration in accordance with the provisions of Section 8.09(b), and that such remedy shall be available only in those cases where this Lease provides that Landlord shall not unreasonably withhold its consent.

(b) (i) No dispute relating to this Lease or the relationship of Landlord and Tenant under this Lease shall be resolved by arbitration unless this Lease expressly provides for such dispute to be resolved by arbitration. Either party shall have the right to submit a dispute relating to (x) the reasonableness of the grant or denial of a consent or other determination by the other party when, pursuant to the provisions of this Lease, such other party's consent was not to be unreasonably withheld or (y) any other matter for which arbitration is expressly provided as a means of dispute resolution pursuant to the terms of this Lease (except for matters for which a different arbitration procedure is expressly provided), to final and binding arbitration in New York, New York administered by JAMS in accordance with JAMS Streamlined Arbitration Rules and Procedures in effect at that time (or, if JAMS is no longer in existence, then administered by National Arbitration and Mediation (" NAM "), in accordance with NAM's Comprehensive Dispute Resolution Rules and Procedures; and if NAM is no longer in existence, then administered by the American Arbitration Association under the Expedited Procedures of its Commercial Arbitration Rules in effect at that time; and if none of the preceding remains in existence, by the expedited arbitration procedures of any succeeding or substantially similar dispute resolution organization). A single arbitrator will be selected pursuant to such rules and procedures (the "JAMS Arbitrator"). The parties agree that: (1) the unsuccessful party in such arbitration will pay to the successful party all reasonable attorneys' fees and disbursements incurred by the successful party in connection with such arbitration, and will pay any fees and disbursements due to JAMS (or the organization administering the arbitration) and the JAMS Arbitrator and, to the extent the "successful" party cannot be clearly identified, each party will bear its own costs and expenses and the parties will pay their equal share of any fees and disbursements due to JAMS (or the organization administering the arbitration) and the JAMS Arbitrator; (2) arbitration pursuant to this Section 8.09(b)(i) is intended to be the sole and exclusive method of arbitration to be utilized by the parties and the sole and exclusive dispute resolution method to be utilized by the parties concerning any dispute described in clauses (x) or (y) of this Section 8.09(b); (3) judgment may be had on the decision and award of the arbitrator so rendered in any court of competent jurisdiction (each party hereby consenting to the entry of such judgment in any such court); (4) the JAMS Arbitrator shall have no right to award damages (though the foregoing shall not preclude the JAMS Arbitrator from issuing a determination that results in the payment or credit from one party to the other if such payment or credit is the subject matter of such arbitration); and (5) any decision or award rendered in such arbitration, whether or not such decision or award has been entered for judgment, shall be final and binding upon Landlord and Tenant and shall constitute an "award" by the JAMS Arbitrator within the meaning of the applicable arbitration rules and Laws. The JAMS Arbitrator will be bound by the provisions of this Lease and will not have the power to add to, subtract from or otherwise modify such provisions, and will have the authority to, and may, order specific performance to remedy any breach of the terms of this Lease. The JAMS Arbitrator will consider only the specific issues submitted to him/her for resolution, and will be directed to make a determination as to the "successful" party or a specific determination that there is no prevailing party. If any party fails to appear at a duly scheduled and noticed hearing, the JAMS Arbitrator is hereby expressly authorized to enter judgment for the appearing party. The JAMS Arbitrator shall be directed by both parties to issue a determination that provides an explanation of his/her decision with reasonable specificity. Landlord and Tenant shall each have the right to appear and be represented by counsel before said JAMS Arbitrator and to submit such data and memoranda in support of their respective positions in the matter in dispute as may be reasonably necessary or appropriate under the circumstances. Neither party shall have ex parte communications with any arbitrator selected under this Section 8.09(b) following his or her selection and pending completion of the arbitration hereunder.

(ii) Any JAMS Arbitrator acting under this Section 8.09 in connection with any matter shall (1) be experienced in the field to which the dispute relates, (2) have been actively engaged in such field for a period of at least 10 years before the date of his or her appointment as a JAMS Arbitrator hereunder, (3) be sworn fairly and impartially to perform his or her respective duties as a JAMS Arbitrator hereunder, (4) not be an employee or past employee of Landlord or Tenant or of any other person, partnership, corporation or other form of business or legal association or entity that controls, is controlled by or is under common control with Landlord or Tenant and (5) never have represented or been retained for any reason whatsoever by Landlord or Tenant or any other person, partnership, corporation or other form of business or legal association or entity that controls, is controlled by or is under common control with Landlord or Tenant.

(iii) Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. For such period, if any, as this agreement to arbitrate is not legally binding or the arbitrator's award is not legally enforceable, the provisions requiring arbitration shall be deemed deleted and matters to be determined by arbitration shall be subject to litigation.

(iv) The provisions of this Section 8.09(b) shall survive the expiration or sooner termination of this Lease.

**8.10 No Offer; Counterparts.** The submission by Landlord of this Lease in draft form shall be solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall confer no rights nor impose any obligations, including brokerage obligations, on either party unless and until both Landlord and Tenant shall have executed a lease and duplicate originals thereof shall have been delivered to the respective parties. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, even where such executed counterpart is delivered via facsimile or Portable Document Format, but all of which together shall constitute one and the same instrument.

**8.11 Captions; Construction.** The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

**8.12 Amendments** . This Lease may not be altered, changed or amended, except by an instrument in writing signed by the party to be charged.

**8.13 Broker** . Each party represents to the other that such party has dealt with no broker other than CBRE, Inc. (representing Landlord) and Newmark & Company Real Estate, Inc., d/b/a Newmark Grubb Knight Frank (representing Tenant) (collectively, the “Broker”) in connection with this Lease or, with respect to Tenant only, the Project, and each party shall indemnify and hold the other harmless from and against all loss, cost, liability and expense (including, without limitation, reasonable attorneys’ fees and disbursements) arising out of any claim for a commission or other compensation by any broker other than Broker who alleges that it has dealt with the indemnifying party in connection with this Lease or the Project. Landlord shall enter into separate agreements with Broker which provide that, if this Lease is executed and delivered by both Landlord and Tenant, Landlord shall pay to Broker any commission that Broker may be entitled to in connection with this Lease, subject to, and in accordance with, the terms and conditions of such agreement.

**8.14 Merger** . Tenant acknowledges that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease. This Lease embodies the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, understanding and statements, oral or written, with respect thereto are merged in this Lease.

**8.15 Successors** . This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent that an assignment may be approved by Landlord or is otherwise expressly permitted under the terms of this Lease, Tenant’s assigns.

**8.16 Applicable Law** . This Lease shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any principles of conflicts of laws.

**8.17 No Development Rights** . Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Project or any portion thereof, and consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver, at no out-of-pocket cost to Tenant, any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this Section 8.17 shall be construed as an express waiver by Tenant of any interest Tenant may have as a “party in interest” (as such term is defined in Section 12-10 Zoning Lot of the Zoning Resolution of the City of New York) in the Project.

**8.18 Condominium**. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to any condominium declaration and any other documents (collectively, the "Declaration") which are or shall be recorded in order to convert the Land and the improvements erected thereon to a condominium form of ownership in accordance with the provisions of Article 9-B of the Real Property Law, or any successor thereto, provided the Declaration does not include any terms which increase Tenant's monetary or non-monetary obligations (other than to a de minimis extent) or decrease Tenant's rights (other than to a de minimis extent) or materially interfere with Tenant's use of the Premises for executive, administrative and general office purposes. If any such Declaration is to be recorded, Tenant, upon the request of Landlord, shall enter into an amendment of this Lease (at no out-of-pocket costs to Tenant other than any legal fees incurred by Tenant in connection with same) reasonably acceptable to Tenant confirming such subordination and modifying the Lease in such respects as shall be necessary to conform to such condominiumization, including, without limitation, appropriate adjustments to Tenant's Share and appropriate reductions in the Base Operating Amount, the Base PILOT Amount and the Base Impositions Amount; provided, that, Landlord provides to Tenant a subordination, non-disturbance and attornment agreement duly executed by the board of such condominium in a form reasonably acceptable to Tenant.

**8.19 Embargoed Person**. Tenant represents that as of the date of this Lease, and Tenant covenants that throughout the Effective Period: (a) Tenant is not, and shall not be, an Embargoed Person, (b) none of the funds or other assets of Tenant are or shall constitute property of, or are or shall be beneficially owned, directly or indirectly, by any Embargoed Person; (c) no Embargoed Person shall have any interest of any nature whatsoever in Tenant, with the result that the investment in Tenant (whether directly or indirectly) is or would be blocked or prohibited by law or that this Lease and performance of the obligations hereunder are or would be blocked or in violation of law and (d) none of the funds of Tenant are, or shall be derived from, any activity with the result that the investment in Tenant (whether directly or indirectly) is or would be blocked or in violation of law or that this Lease and performance of the obligations hereunder are or would be in violation of law. "Embargoed Person" means a person, entity or government (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the United States Treasury Department Office of Foreign Assets Control and/or any similar list maintained pursuant to any authorizing statute, executive order or regulation and/or (ii) subject to trade restrictions under United States law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such laws, with the result that the investment in Tenant (whether directly or indirectly), is or would be prohibited by law or this Lease is or would be in violation of law and/or (iii) subject to blocking, sanction or reporting under the USA Patriot Act, as amended; Executive Order 13224, as amended; Title 31, Parts 595, 596 and 597 of the U.S. Code of Federal Regulations, as they exist from time to time; and any other law or Executive Order or regulation through which the U.S. Department of the Treasury has or may come to have sanction authority. If any representation made by Tenant pursuant to this Section 8.19 shall become untrue Tenant shall within 10 days give written notice thereof to Landlord, which notice shall set forth in reasonable detail the reason(s) why such representation has become untrue and shall be accompanied by any relevant notices from, or correspondence with, the applicable governmental agency or agencies.

**8.20 Dining Facility; Wet Installations .** (a) Tenant shall be permitted to use a portion of the Premises for the operation of a Dining Facility provided (i) Tenant obtains (at its cost and expense) any and all required permits, licenses and certificates therefor (including, without limitation, any necessary amendment to the certificate of occupancy for the Building which shall be subject to the provisions of Section 1.04(c)), (ii) Tenant shall perform and pay for any necessary extermination, ventilation and cleaning (in excess of normal office ventilation and cleaning) necessitated by the use of such space as a Dining Facility (it being understood that Landlord's provision of cleaning services shall not be extended beyond that provided for herein by reason of Landlord's approval of the use of such space as a Dining Facility), (iii) Tenant shall cause the Dining Facility to be properly ventilated so that no odor will emanate from the Premises to other portions of the Building and so as to impose no additional loads and have no other adverse effect on the Building HVAC system (including, without limitation, by replacing and/or upgrading filters) and (iv) Tenant shall otherwise maintain and operate each Dining Facility consistent with the standards of a First Class Office Building.

(b) In connection with Tenant's use of portion(s) of the Premises for the operation of a Dining Facility, the parties agree as follows:

(i) Tenant acknowledges that if any smoke or odors are released by Tenant from the Premises, Tenant, at its expense, upon and subject to all of the terms of this Lease, upon Landlord's request, shall perform any work or Alteration reasonably requested by Landlord to remedy such problem.

(ii) Tenant, at its expense, upon and subject to all of the terms of this Lease shall keep its equipment and appliances reasonably clean at all times.

(iii) Tenant, at its expense upon and subject to all of the terms of this Lease, shall diligently keep the Premises at all times free and clear of rats, mice, other rodents, pests, insects and other vermin. In furtherance thereof, Tenant shall employ an exterminator reasonably approved by Landlord to regularly exterminate such rats, mice, other rodents, pests, insects and other vermin, which exterminator shall utilize a method commonly used in First Class Office Buildings for the prevention of any infestation by, and extermination of, said animals and insects and Tenant shall take whatever precautions Landlord deems reasonably necessary to prevent such rats, mice, other rodents, pests, insects and other vermin from existing in the Premises or permeating into other parts of the Building. Any pest management conducted at the Premises shall emphasize non-chemical methods for pest control and comply with Landlord's reasonable integrated pest management program, which program shall be generally applicable to all office tenants of the Building.

(iv) Tenant, at its expense, upon and subject to all of the terms of this Lease, shall arrange for the removal of Tenant's refuse and rubbish from each Dining Facility at least once each day and in compliance with all Rules and Regulations and shall retain Landlord's contractor(s) to perform the same at Tenant's expense. Landlord shall not be required to furnish any services or equipment for the removal of such refuse and rubbish except (i) Landlord shall provide adequate space for the staging of recycling containers in freight areas and (ii) as may otherwise be expressly provided in this Lease. Tenant further agrees not to permit any refuse or rubbish to be collected or disposed of from a Dining Facility during Business Hours. Tenant shall store all food-related and beverage-related garbage in closed refrigerated units within the Premises until collection. Tenant covenants that no supplies or deliveries, nor any of Tenant's refuse or rubbish, shall be kept or permitted to be kept in any area outside of the Premises except as permitted by the applicable Rules and Regulations.

(v) Landlord, at Tenant's reasonable expense, may install submeters to measure Tenant's consumption of water in connection with the use of any Dining Facilities, in which event Tenant shall reimburse Landlord for the quantities of water shown on such meters, within 30 days after demand, at Landlord's then established charges therefor, which charges as of the Effective Date are set forth on Exhibit H attached hereto based on the actual costs to Landlord to provide such water and shall be subject to increase to the extent of any actual increase in the cost to Landlord of providing such water.

(vi) Subject to the applicable provisions of this Lease and Landlord's review and approval of Tenant's plans therefor, Tenant shall have the right, as part of Tenant's Initial Work or as a subsequent Alteration, at Tenant's sole cost and expense, to install an electric water heater, in a location in the Premises to be designated by Landlord, to serve any Dining Facility in the Premises.

(vii) If requested by Landlord in connection with any cafeteria or similar dining facility installed by Tenant in the Premises, Tenant, at its expense, upon and subject to all of the terms of this Lease (including, without limitation, Section 4.02), shall install, maintain and replace as necessary a dehydration grinder capable of achieving at least a 75% reduction in organic waste volume and shall run all organic waste generated by or in connection with any such Dining Facility through such dehydration grinder prior to disposing of such waste in accordance with the provisions of this Section 8.20.

**8.21 Press Releases.** Without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), neither party nor such party's affiliates or their officers, shareholders, partners, directors, employees or representatives shall make or provide any public statement, press release or other public disclosure concerning the transactions contemplated by, and the terms of, this Lease (including, without limitation, by means of statements, press releases or disclosures displayed or accessible electronically, on the internet and/or on social media, such as, by way of example only, Facebook and Twitter), except (i) for any such public statements or disclosures which, in the opinion of such party's counsel, are legally required (in which case the content of such statements or disclosures shall be limited to what is legally required) or (ii) to the extent required by securities laws or compliance provisions of other Laws or any securities, bond or commodities exchange. In the event that a public announcement or disclosure is permitted pursuant to clauses (i) or (ii) of the preceding sentence, prior to making such disclosure, the disclosing party shall notify the other party of such required public disclosure and use reasonable efforts to coordinate with the other party with respect to the nature and content of such disclosure.

**8.22 Tenant Creditworthiness.** Tenant shall, from time to time, upon request by Landlord, a Superior Mortgagee or Superior Lessee or a prospective Superior Mortgagee or Superior Lessee (any such party a “Requesting Party”), cooperate with such Requesting Party in order to establish Tenant’s creditworthiness as required by such Requesting Party (or, in the case of Landlord, as required by Landlord or any current or prospective Superior Mortgagee or Superior Lessee) in connection with a prospective modification of, or new, superior lease, a prospective refinancing or modification of, or new mortgage, or a prospective sale, assignment or financing or refinancing of Landlord’s interest in this Lease, the Project or any interest in Landlord or any of Landlord’s direct or indirect owners, or for any other reasonable purpose. In connection with such cooperation, Tenant shall furnish to the Requesting Party, within 10 Business Days after request by such Requesting Party, all financial information regarding Tenant which is reasonably necessary for such Requesting Party to establish Tenant’s creditworthiness, provided, however that Tenant may withhold any information which Tenant is not permitted to disclose under securities laws applicable to public companies. As a condition to Tenant’s obligation to provide such financial information to any Requesting Party other than Landlord, prior to Tenant’s delivery of such financial information, the Requesting Party (if such party is not Landlord) shall execute and deliver a confidentiality agreement with respect to such financial information substantially in the form attached hereto as Exhibit N, subject to reasonable negotiation at the request of the Requesting Party.

**8.23 Recording.** Landlord and Tenant agree not to place this Lease or any memorandum of this Lease of record.

**8.24 REIT/UBTI Compliance.** All Rent and all sums, charges, or amounts of whatever nature under this Lease payable to Landlord shall qualify as “rents from real property” under both the Internal Revenue Code § 512(b)(3) and § 856(d) and all related statutes, regulations, revenue rulings, interpretations, and other official pronouncements, all as in effect from time to time. If the Rent or any other sum, charge, or amount of whatever nature to be paid by Tenant to Landlord under this Lease does not so qualify, then Landlord may reasonably adjust the Rent to achieve such qualification; provided that such adjustments, in the aggregate, produce the economic equivalent to the Rent that would have been payable by Tenant to Landlord without giving effect to any such adjustments. Tenant, at no cost to Tenant, shall execute such documents as Landlord reasonably requires to make such adjustments. If the charge or cost for any service required or permitted to be performed by Landlord pursuant to this Lease may be treated as “impermissible tenant service” income under the Laws governing a real estate investment trust (“REIT”), or as unrelated business taxable income, then, in lieu of Landlord performing such service, such service may be performed by a taxable REIT subsidiary that is affiliated with either Landlord or Landlord’s property manager, an independent contractor of Landlord or Landlord’s property manager who shall perform its obligations subject to the same requirements as are applicable to Landlord under this Lease (the “Service Provider”). If Tenant is subject to a charge under this Lease for any such service, then, at Landlord’s direction, Tenant shall pay such charge either to Landlord for further payment to the Service Provider or directly to the Service Provider, and, in either case, (a) Landlord will credit such payment against Additional Charges due from Tenant under this Lease for such service and (b) such payment to the Service Provider will not relieve Landlord from any obligation under this Lease concerning the provisions of such service.

**8.25 Time of the Essence.** Time shall be of the essence with respect to all deadlines and time periods set forth in this Lease for the exercise of rights under this Lease.

**8.26 Car Service Access to Building.** Subject to all applicable Laws, the Rules and Regulations and such reasonable security procedures as may from time to time be promulgated by Landlord, Tenant shall have the non-exclusive right to use a curbside location to be designated by Landlord at or near the 34<sup>th</sup> Street Building lobby for the pick-up and drop-off of its officers, employees and visitors by any car service company or drivers employed or hired by Tenant. Only Tenant and other Permitted Users may use such curbside space, and Tenant is expressly prohibited from licensing or otherwise assigning, in whole or in part, the use thereof to any other entity, except in connection with a permitted assignment of Tenant's interest in this Lease.

## **ARTICLE 9**

### **Renewal Right**

**9.01 Renewal Right.** (a) Provided that (A) on the date Tenant exercises the First Renewal Option and at the commencement of the First Renewal Term (i) this Lease has not been terminated, (ii) Tenant occupies at least 1 full floor of the Building and (iii) Tenant is an Intercept Tenant or an assignee of Tenant's interest in this Lease in accordance with the terms hereof, and (B) on the date Tenant exercises the First Renewal Option Tenant is not in monetary or material non-monetary default under this Lease beyond applicable notice and cure periods, Tenant shall have the option (the "First Renewal Option") to extend the initial Term of this Lease, at Tenant's sole discretion as indicated by Tenant in the First Renewal Notice, for either an additional (x) 10 year period (the "Ten Year Renewal Term") or (y) 5 year period (the "First Five Year Renewal Term"), to commence at the expiration of the initial Term.

(b) The First Renewal Option shall be exercised with respect to a Renewal Premises only and shall be exercisable by Tenant giving notice to Landlord (the "Renewal Notice") at least 16 months before the last day of the initial Term. Tenant shall specify in the First Renewal Notice whether Tenant elects the Ten Year Renewal Term or the First Five Year Renewal Term (failing which Tenant shall have been deemed to have elected the Ten Year Renewal Term). Time is of the essence with respect to the giving of the First Renewal Notice.

(c) Provided that (A) Tenant exercised the First Renewal Option for the First Five Year Renewal Term, (B) on the date Tenant exercises the Second Renewal Option and at the commencement of the Second Renewal Term (i) this Lease has not been terminated, (ii) Tenant occupies at least 1 full floor of the Building and (iii) Tenant is an Intercept Tenant or an assignee of Tenant's interest in this Lease in accordance with the terms hereof, and (C) on the date Tenant exercises the Second Renewal Option Tenant is not in monetary or material non-monetary default under this Lease beyond applicable notice and cure periods, Tenant shall have the option (the "Second Renewal Option"; the First Renewal Option and Second Renewal Option are each a "Renewal Option") to extend the term of this Lease for an additional 5 year period (the "Second Renewal Term"; the First Five Year Renewal Term, the Second Renewal Term and the Ten Year Renewal Term are each a "Renewal Term"), to commence at the expiration of the First Five Year Renewal Term. For the avoidance of doubt, if Tenant elected or is deemed to have elected the Ten Year Renewal Option for the First Renewal Option, then Tenant shall not have the right to the Second Renewal Option.

(d) The Second Renewal Option shall be exercised with respect to a Renewal Premises only and shall be exercisable by Tenant giving notice to Landlord (the “Second Renewal Notice”) at least 16 months before the last day of the First Five Year Renewal Term. Time is of the essence with respect to the giving of the Second Renewal Notice.

(e) Each Renewal Option shall be exercised with respect to space selected by Tenant and designated in the applicable Renewal Notice (the space as to which Tenant exercises (or is deemed to have exercised) the Renewal Option pursuant to this Section 9.01 is called the “Renewal Premises”); provided, that Tenant shall only have the right to designate as the Renewal Premises either:

(i) the entire Premises demised by this Lease as of the date on which Tenant gives the applicable Renewal Notice; or

(ii) a portion of the Premises demised by this Lease as of the date on which Tenant gives the applicable Renewal Notice consisting of 1 or more contiguous full floors of the then Premises starting, at Tenant’s option, with either the highest or lowest office floor of the largest contiguous block of floors in the Building then leased by Tenant.

If Tenant fails in any Renewal Notice to designate the Renewal Premises, then the Renewal Premises shall be deemed to be the entire Premises demised by this Lease as of the date on which Tenant gives such Renewal Notice.

**9.02 Renewal Rent and Other Terms.** (a) Each Renewal Term shall be upon all of the terms and conditions set forth in this Lease, except that (i) the Fixed Rent shall be as determined pursuant to the further provisions of this Section 9.02; (ii) Tenant shall accept the Renewal Premises in its “as is” condition at the commencement of applicable Renewal Term subject, however, to Landlord’s ongoing maintenance and repair obligations expressly set forth in this Lease, and, except as provided in clause (xi) below, Landlord shall not be required to perform any work, to pay the Work Allowance or any other amount or to render any services to make the Premises ready for Tenant’s use and occupancy or to provide any abatement of Fixed Rent or Additional Charges, in each case with respect to the applicable Renewal Term; (iii) Tenant shall have no option to renew this Lease beyond the expiration of the Ten Year Renewal Term or the Second Renewal Term, as applicable; (iv) the Base PILOT Amount shall be the PILOT Amount for the Tax Year ending immediately before the commencement of the applicable Renewal Term (or, if the PILOT Cessation Date shall have occurred, the Base PILOT Amount shall be the Taxes for the Tax Year ending immediately before the commencement of the applicable Renewal Term); (v) the Base Impositions Amount shall be the Impositions for the Tax Year ending immediately before the commencement of the applicable Renewal Term; (vi) the Base Operating Amount shall be the Operating Expenses for the Operating Year ending immediately before the commencement of the applicable Renewal Term; (vii) all references in this Lease to the “Premises” shall be deemed to refer to the Renewal Premises; (viii) if the Renewal Premises consists of less than all of the then Premises, Tenant’s Share shall be proportionately reduced; (ix) if the Renewal Premises consists of less than all of the then Premises, then any space as to which this Lease is not being renewed shall be delivered to Landlord one day before the first day of the applicable Renewal Term vacant and free of any lien or encumbrance and otherwise in the condition required pursuant to this Lease (including, without limitation, Sections 4.03(c) and (d)) as if such date were the expiration date of this Lease, (x) all references in this Lease to the Expiration Date shall be deemed to mean the last day of the applicable Renewal Term and (xi) Tenant shall be entitled to any rent abatement and/or work allowance determined in accordance with Section 9.02(b) below; it being agreed that any such work allowance will be provided to Tenant for Tenant’s Alterations to the Renewal Premises in accordance with the provisions of Section 3.03 hereof, applied *mutatis mutandis* .

(b) The annual Fixed Rent for the Renewal Premises for each Renewal Term shall be the Fair Market Rent for such Renewal Term. “Fair Market Rent” means the fixed annual rent that a willing lessee would pay and a willing lessor would accept for the Renewal Premises during the applicable Renewal Term, taking into account all relevant factors (including, without limitation, any rent abatement or work allowance to which Tenant may be entitled as determined in accordance with the further provisions of this clause (b)). In conjunction with, and as a component of, the determination of Fair Market Rent, Landlord and Tenant may include the amount of any rent abatement or work allowance to which Tenant shall be entitled for the Renewal Premises, if any, based on the amount of any rent abatement or work allowance that a willing lessee and a willing lessor would accept for the Renewal Premises, taking into account all relevant factors (including, without limitation, the amount of the Fair Market Rent and the terms set forth in Section 9.02(a)). Each party shall indicate its determination of the amount of any rent abatement and/or work allowance to which Tenant should be entitled in connection with the leasing of the Renewal Premises in Landlord’s Determination or Tenant’s Determination, as applicable. The Fair Market Rent shall be determined as of the date which is 120 days prior to the commencement of the applicable Renewal Term.

(c) If Tenant timely exercises a Renewal Option, Landlord and Tenant shall promptly commence and diligently and in good faith seek to establish the Fair Market Rent. If Landlord and Tenant are unable to agree (for any reason) upon the Fair Market Rent on or prior to the date that is 120 days before the last day of the then Term, then the Fair Market Rent shall be determined by arbitration in the City of New York as set forth in Section 9.02(d).

(d) (i) Either Landlord or Tenant shall request JAMS (or, if JAMS is then no longer in effect, the Real Estate Board of New York) to appoint an arbitrator who shall be impartial and both parties shall be bound by any appointment so made. If JAMS (or the Real Estate Board of New York, as applicable) shall fail to appoint an arbitrator within 30 days after such request is made, either Landlord or Tenant may apply to the Supreme Court, New York County to make such appointment. The arbitrator shall be an MAI appraiser or a licensed real estate broker having at least 15 years of experience in leasing of First Class Office Buildings. As soon as reasonably practicable after the appointment of the arbitrator, the arbitrator shall meet with Landlord and Tenant (the “Initial Meeting”). At the Initial Meeting, Landlord shall submit to the arbitrator its determination of the Fair Market Rent (“Landlord’s Determination”) in a sealed envelope contemporaneously with Tenant’s submission to the arbitrator of its determination of the Fair Market Rent (“Tenant’s Determination”) in a sealed envelope, whereupon the arbitrator shall open both envelopes. If one party shall be ready, willing and able to submit its determination of the Fair Market Rent at such Initial Meeting, but the other party shall fail to submit its determination of the Fair Market Rent at such Initial Meeting, then the party who is so ready, willing and able to submit its determination shall not be required to do so, and the Initial Meeting shall be rescheduled to a date which is not more than 3 Business Days following the Initial Meeting, at which rescheduled Initial Meeting the arbitrator shall open both envelopes. If the party that was not ready, willing and able to submit its determination of the Fair Market Rent at the Initial Meeting shall not submit its determination of the Fair Market Rent at such rescheduled meeting, the determination of the party that was ready, willing and able to submit its determination at the Initial Meeting shall constitute the Fair Market Rent. If Landlord’s Determination and Tenant’s Determination are not the same, then the arbitrator shall set a hearing date for arbitration, which hearing shall not exceed two days and shall be scheduled to be held within 60 days after the Initial Meeting.

(ii) There shall be no discovery in the arbitration. However, on reasonable notice to the other party, Tenant may inspect any portion of the Building relevant to its claims, and Landlord may inspect any portion of the space occupied by Tenant on the floors in issue. On or before the date that is 30 days prior to the scheduled hearing, the parties shall exchange opening written expert reports and opening written pre-hearing statements. Opening written pre-hearing statements shall not exceed 20 pages in length. On or before the date that is two weeks prior to the hearing, the parties may exchange rebuttal written expert reports and rebuttal written pre-hearing statements. Rebuttal written pre-hearing statements shall not exceed 10 pages in length. On or before the date that is 10 days prior to the hearing, the parties shall exchange written witness lists, including a brief statement as to the subject matter to be covered in the witnesses' testimony, and submit the same contemporaneously to the arbitrator. On or before the date that is one week prior to the hearing, the parties shall exchange all documents which they intend to offer at the hearing. Other than rebuttal witnesses, only the witnesses listed on the witness lists shall be allowed to testify at the hearings. Closing arguments shall be heard immediately following conclusion of all testimony. The proceedings shall be recorded by stenographic means. Each party may present live witnesses and offer exhibits, and all witnesses shall be subject to cross-examination. The arbitrator shall conduct the two day hearing so as to provide each party with sufficient time to present its case, both on direct and on rebuttal, and permit each party appropriate time for cross examination; provided, that the arbitrator shall not extend the hearing beyond two days. Each party may, during its direct case, present evidence in support of its position and in opposition to the position of the opposing party.

(iii) The arbitrator shall make a determination of the Fair Market Rent by selecting either the amount set forth in Landlord's Determination or the amount set forth in Tenant's Determination, whichever the arbitrator determines is closest to Fair Market Rent. The arbitrator may not select any other amount as the Fair Market Rent. The fees and expenses of any arbitration pursuant to this Section 9.02(d) shall be borne by the parties equally, but each party shall bear the expense of its own attorneys and experts and the additional expenses of presenting its own proof. The arbitrator shall not have the power to add to, modify or change any of the provisions of this Lease. After a determination has been made of the Fair Market Rent, the parties shall execute and deliver an instrument setting forth the Fair Market Rent, but the failure to so execute and deliver any such instrument shall not effect the determination of Fair Market Rent.

(e) If the final determination of Fair Market Rent shall not be made on or before the first day of the applicable Renewal Term, then, pending such final determination, Tenant shall pay, as Fixed Rent for such Renewal Term, an amount equal to Landlord's Determination. If, based upon the final determination of the Fair Market Rent, the Fixed Rent payments made by Tenant for such portion of the Renewal Term were greater than the Fair Market Rent payable for the Renewal Term, Landlord shall credit the amount of such excess against future installments of Fixed Rent and/or Additional Charges payable by Tenant.

## **ARTICLE 10**

### **Intentionally Omitted**

## **ARTICLE 11**

### **Right of First Offer**

#### **11.01 Offer Space Option.** (a) As used herein:

(i) "Available" means, as to any space, that such space is vacant and free of any present or future possessory right now or hereafter existing in favor of any third party (including, without limitation, any space recaptured by Landlord from other tenants in the Building); provided, that any space that is not leased on the date of this Lease shall not be deemed Available unless and until such space is first leased to another tenant and then again becomes Available. Anything to the contrary contained herein notwithstanding, Tenant's right of first offer pursuant to this Section 11.01 is subordinate to (A) any right of offer, right of first refusal, expansion right or similar right or option in favor of any third party existing as of the date of this Lease (the "Existing Superior Rights"), (B) any expansion right or option in favor of any tenant of the Building (other than Tenant) which is (x) for specified space (provided that such specified space may include more than one option for various configurations, locations or amounts of space), (y) to be exercised on a fixed date or within a defined window of time and (z) set forth in a lease with a tenant of the Building, whether such right or option is existing as of the date of this Lease or is entered into at any time hereafter and (C) Landlord's right to renew or extend the term of any lease or sublease to another tenant or existing subtenant, as the case may be, whether or not pursuant to an option or right set forth in such other tenant's lease or sublease. The Existing Superior Rights in effect on the date hereof are listed on Exhibit W attached hereto. Landlord agrees to reasonably promptly provide Tenant with a list of any superior rights described in the foregoing clauses (A) and (B) if Tenant requests same from Landlord in writing during the Term; provided, that Landlord shall not be obligated to provide same more than once per calendar year during the Term.

(ii) “Offer Period” means the period commencing on the Effective Date to and including the date that is 5 years prior to the Expiration Date (as the same may be extended pursuant to Article 9 of this Lease).

(iii) “Offer Space” means the first full or partial floor of the Building to become Available that is serviced by the Elevators and is not part of the Premises.

(b) Provided (i) this Lease has not been terminated, (ii) Tenant is not in default under this Lease beyond applicable notice and cure periods, (iii) Tenant or an Intercept Tenant occupies at least 1 full floor of the Building and (iv) Tenant is an Intercept Tenant or an assignee of Intercept Tenant’s interest in this Lease in accordance with the terms hereof, if at any time during the Offer Period any Offer Space either becomes, or Landlord reasonably anticipates that within the next (x) if the Offer Space consists of more than 1 full floor, 17 months and (y) if the Offer Space consists of 1 full floor or less, 13 months (but, in each case, not later than the last day of the Offer Period) such Offer Space will become, Available, Landlord shall give to Tenant notice (an “Offer Notice”) thereof, specifying (A) the rentable square footage of such Offer Space, (B) the date or estimated date that such Offer Space has or shall become Available (the “Anticipated Offer Space Inclusion Date”), (C) the condition in which Landlord is willing to lease such Offer Space, including, without limitation, any Base Building Work which Landlord is willing to perform and/or work allowance or contribution which Landlord is willing to make towards the cost of Tenant’s initial installation in such Offer Space and (D) such other matters as Landlord may deem appropriate for such Offer Notice.

(c) Provided that on the date that Tenant exercises the Offer Space Option and on the applicable Offer Space Inclusion Date (i) this Lease has not been terminated, (ii) Tenant is not in default under this Lease beyond applicable notice and cure periods, (iii) Tenant occupies at least 1 full floor of the Building and (iv) Tenant is an Intercept Tenant, or an assignee of Intercept Tenant’s interest in this Lease in accordance with the terms hereof, Tenant shall have the one-time option (the “Offer Space Option”), exercisable by notice (an “Acceptance Notice”) given to Landlord on or before the date that is 30 days after the date the Offer Notice was given (time being of the essence) to include (all but not less than all of) the applicable Offer Space in the Premises.

(d) If Tenant timely delivers the Acceptance Notice, then, on the date on which Landlord delivers vacant possession of the applicable Offer Space to Tenant in the condition specified in the Offer Notice (the “Offer Space Inclusion Date”), such Offer Space shall become part of the Premises, upon all of the terms and conditions set forth in this Lease, except (i) Fixed Rent shall be increased by the Fair Offer Rent, (ii) Tenant’s Share with respect to such Offer Space shall be calculated on the basis of the rentable square footage of such Offer Space set forth in the applicable Offer Notice, (iii) the Base PILOT Amount with respect to such Offer Space shall be the PILOT Amount payable by Landlord pursuant to the PILOT Agreement for the Tax Year ending immediately prior to Landlord’s delivery of the applicable Offer Notice (or, if the PILOT Cessation Date shall have occurred, the Base PILOT Amount shall be the Taxes for the Tax Year ending immediately prior to Landlord’s delivery of the applicable Offer Notice), (iv) the Base Impositions Amount with respect to such Offer Space shall be the Impositions for the Tax Year ending immediately prior to Landlord’s delivery of the applicable Offer Notice, (v) the Base Operating Amount with respect to such Offer Space shall be the Operating Expenses for the Operating Year ending immediately prior to Landlord’s delivery of the applicable Offer Notice, (vi) Tenant shall be entitled to any rent abatement and/or work allowance determined in accordance with Section 11.01(e) below; it being agreed that any such work allowance will be provided to Tenant for Tenant’s Alterations to such Offer Space to prepare the same for initial occupancy in accordance with the provisions of Section 3.03 hereof, applied *mutatis mutandis*, (vii) other than as expressly set forth in this Section 11.01(d), Landlord shall not be required to perform any work, to pay any other work allowance or any other amount, or to render any services to make the Building or such Offer Space ready for Tenant’s use or occupancy or to provide any abatement of Fixed Rent or Additional Charges, and Tenant shall accept such Offer Space in its “as is” condition on the applicable Offer Space Inclusion Date and (viii) as may be otherwise set forth in the applicable Offer Notice. “Fair Offer Rent” means the fixed annual rent that a willing lessee would pay and a willing lessor would accept for the applicable Offer Space, taking into account all relevant factors.

(e) If Tenant timely delivers the Acceptance Notice, the Fair Offer Rent shall be determined in accordance with Sections 9.02(c) and 9.02(d) hereof; provided, that (i) all references in said Section 9.02(d) to “Fair Market Rent” shall be deemed to refer to “Fair Offer Rent” and (ii) in conjunction with, and as a component of, the determination of the Fair Offer Rent, Landlord and Tenant shall establish the amount of any rent abatement or work allowance to which Tenant shall be entitled for the applicable Offer Space, if any, based on the amount of any rent abatement or work allowance that a willing lessee and a willing lessor would accept for such Offer Space, taking into account all relevant factors (including, without limitation, the amount of the Fair Offer Rent and the terms set forth in Section 11.01(d)). Each party shall indicate its determination of the amount of any rent abatement and/or work allowance to which Tenant should be entitled in connection with the leasing of the applicable Offer Space in Landlord’s Determination or Tenant’s Determination, as applicable. If the Fair Offer Rent has not been finally determined in accordance with Section 11.01(e) on or before the applicable Offer Space Inclusion Date, then pending such determination, Tenant shall pay as Fixed Rent for the applicable Offer Space the Fair Offer Rent as determined by Landlord. If, based on the final determination of Fair Offer Rent, the Fixed Rent payments made by Tenant for the applicable Offer Space were greater than the Fair Offer Rent, Landlord shall credit the amount of such excess against future installments of Fixed Rent and/ or Additional Charges payable by Tenant under this Lease.

(f) If Landlord is unable to deliver possession of any Offer Space to Tenant for any reason on or before the Anticipated Offer Space Inclusion Date, the applicable Offer Space Inclusion Date shall be the date on which Landlord is able to so deliver possession and Landlord shall have no liability to Tenant therefor and this Lease shall not in any way be impaired; provided, that if Landlord is unable to deliver possession of the Offer Space in question to Tenant on or prior to the date which is 270 days after the Anticipated Offer Space Inclusion Date (as such date shall be extended on a day for day basis for each day of Tenant Delay and Unavoidable Delay), then, as Tenant’s sole and exclusive remedy therefor, Tenant may thereafter cancel the Acceptance Notice by giving notice to Landlord not more than 30 days after the Anticipated Offer Space Inclusion Date (as such date may be so extended) and, if the Offer Space Inclusion Date shall not occur on or before the 30th day after the date Tenant gives such notice of termination, then upon such 30th day, the Acceptance Notice shall be deemed canceled and terminated and neither party shall have any further liabilities or obligations to the other with respect to the Acceptance Notice. Notwithstanding the foregoing, Landlord shall use commercially reasonable efforts to deliver possession of the Offer Space to Tenant on or before the Anticipated Offer Space Inclusion Date, including the institution and prosecution of holdover or other appropriate proceedings against any occupant of the Offer Space. Landlord shall reasonably promptly inform Tenant of any delay in the Anticipated Offer Space Inclusion Date. This Section 11.01(f) constitutes “an express provision to the contrary” within the meaning of Section 223-a of the New York Real Property Law and any other law of like import now or hereafter in effect.

(g) If Tenant fails timely to give an Acceptance Notice, then (i) Landlord may enter into one or more leases of the Offer Space in question with third parties on such terms and conditions as Landlord shall determine, the Offer Space Option shall be null and void and of no further force and effect and Landlord shall have no further obligation to offer any Offer Space to Tenant under this Section 11.01, and (ii) Tenant shall, upon demand by Landlord, execute an instrument confirming Tenant's waiver of, and extinguishing, the Offer Space Option, but the failure by Tenant to execute any such instrument shall not affect the provisions of clause (i) of this Section 11.01(g).

(h) Promptly after the occurrence of any Offer Space Inclusion Date, Landlord and Tenant shall confirm the occurrence thereof and the inclusion of the applicable Offer Space in the Premises by executing an instrument reasonably satisfactory to Landlord and Tenant; provided, that failure by Landlord or Tenant to execute such instrument shall not affect the inclusion of such Offer Space in the Premises in accordance with this Section 11.01.

(i) Anything in this Lease to the contrary notwithstanding, the provisions of this Article 11 granting to Tenant the Offer Space Option shall be null and void and of no force or effect if (i) an Intercept Tenant or an assignee of Intercept Tenant's interest in this Lease in accordance with the terms hereof is no longer the Tenant under this Lease or (ii) Tenant at any time fails to occupy at least 1 full floor of the Building.

## **ARTICLE 12**

### **Signage**

**12.01 Premises Signage.** Subject to the provisions of Article 4, Tenant shall have the right, at Tenant's sole cost and expense, to display Tenant identification signage in the elevator lobby on any full floor of the Premises which Tenant leases; provided, that any such signage has been approved by Landlord (such approval not to be unreasonably withheld, conditioned, or delayed) and is in compliance with applicable Laws. Subject to the provisions of Article 4, Tenant shall have the right, at Tenant's sole cost and expense, to display Tenant identification signage on any door to the Premises on any partial floor of the Premises which Tenant leases; provided, that any such signage is consistent with Landlord's signage criteria, has been approved by Landlord (such approval not to be unreasonably withheld, conditioned, or delayed) and is in compliance with applicable Laws.

**12.02 Other Tenant Lobby Signage.** Provided that (1) Tenant is not in default under this Lease beyond applicable notice and cure periods, (2) an Intercept Tenant occupies at least 150,000 rentable square feet in the Building and (3) Tenant is an Intercept Tenant, then if at any time during the Term, a tenant in the Building is granted rights to place signage inside the lobby entrance of the Building serving the Premises (the “Lobby”), then Tenant shall have the right, at Tenant’s sole cost and expense, to place identification signage comparable in size and location to that of such other tenant in the Lobby subject to the provisions of Section 12.03 below; provided, that the location, size, content, materials and design of such identification signage shall be subject to Landlord’s approval (such approval not to be unreasonably withheld, conditioned, or delayed), in compliance with applicable Laws and otherwise in accordance with Landlord’s signage criteria for the Lobby. All of Tenant’s rights pursuant to this Section 12.02 are personal to Intercept Tenant and in no event shall Tenant sell, assign, convey or otherwise transfer any such rights (in whole or in part) to any third party.

**12.03 Signage Removal.** Tenant covenants and agrees that on the expiration or sooner termination of the Term, Tenant, at its sole cost and expense, shall promptly remove any sign or signs installed or displayed by or on behalf of Tenant pursuant to this Article 14 or otherwise, repair in good and workmanlike manner all damage caused by such removal and restore the affected portion of the Building to the condition in which it existed prior to the installation of any such sign or signs.

**12.04 Building Directory.** If Landlord installs an electronic building directory in the Building, Tenant and Tenant’s Affiliates and any permitted subtenants of Tenant shall be entitled, without charge (except to the extent Landlord incurs any costs in connection with such directory which are includable in Operating Expenses pursuant to the provisions of Section 2.07), to be listed on such directory.

**12.05 Naming.** So long as (i) an Intercept Tenant is the Tenant under this Lease, (ii) Tenant is not then in default under this Lease beyond the expiration of any applicable notice and/or cure period and (iii) an Intercept Tenant occupies at least 2 full floors in the Building, Landlord shall not name the Building for any person or entity other than in connection with a change in the name of the Hudson Yards Development Project. The “Hudson Yards Development Project” means the development project in the area known as “Hudson Yards” which is bounded by 33rd Street, 34th Street, 10th Avenue and Hudson Boulevard (a/k/a 50 Hudson Yards, New York, New York), the Eastern Rail Yards and the Western Rail Yards.

## ARTICLE 13

### Terrace Space

**13.01 Terrace Space.** (a) Landlord shall, as part of Landlord's Work, construct the Premises to include an outdoor terrace (the "Terrace Space") substantially similar to the drawing attached hereto as Exhibit AA on the 24th and 25th floors (collectively, the "Terrace Space Floor") (subject to Laws and structural and design considerations for the Building as determined by Landlord in its sole discretion); provided that (I) the rentable square footage of the Terrace Space and the portion of the floor of the Building that is left out immediately above the Terrace Space Floor in order to create the double height volume of the Terrace Space will be included in the Premises upon remeasurement thereof in accordance with Section 1.01 and (II) Tenant shall pay to Landlord as Additional Charges, within 30 days after receipt of an invoice therefor, all reasonable incremental additional out-of-pocket costs incurred by Landlord as a result of designing, engineering and constructing the Building and the Premises to include such Terrace Space, including any incremental out-of-pocket costs Landlord may incur to provide appropriate structural support in any area of the Building which support would not be required if not for the inclusion of such Terrace Space (it being agreed that (1) Landlord's incremental costs to include a standard outdoor terrace in the Building are currently estimated to be \$1,100,000.00 per terrace and (2) Tenant shall be responsible for all reasonable incremental costs described in this clause (a) even if same are higher than the foregoing estimate). For the avoidance of doubt, the Terrace Space is a single terrace.

(b) Notwithstanding anything to the contrary contained in this Lease, Tenant's use of the Terrace Space shall be subject to the following requirements: (i) Landlord shall not provide any of the Landlord Services set forth in Section 3.01 to the Terrace Space, (ii) any Alterations in or to the Terrace Space shall be deemed to be Alterations affecting the exterior of the Building and shall require Landlord's approval in accordance with Section 4.02, (iii) Tenant shall pay any additional or increased insurance premiums incurred by Landlord (as appropriately prorated among the tenants in the Building if more than one tenant is using outdoor terrace space in the Building), and shall obtain and pay for any additional insurance coverage for the benefit of Landlord in such amount and of such type as Landlord may reasonably require in connection with Tenant's use of the Terrace Space, (iv) Tenant shall not cause any of Landlord's warranties or guaranties with respect to the Terrace Space to be revoked, negated, impaired or limited as a result of Tenant's Alterations to, or use or occupancy of, the Terrace Space; provided, that if Tenant's use of (or Alteration to) the Terrace Space shall revoke, negate or in any manner impair or limit any such warranty or guaranty, then Tenant shall reimburse Landlord for any loss or damage sustained or costs or expenses incurred by Landlord as a result thereof, (v) if at any time Landlord's structural engineer recommends that there be structural reinforcement of the Terrace Space in connection with the Tenant's use thereof, Landlord shall perform the same at Tenant's expense, (vi) any equipment to be installed in or on the Terrace Space (x) may not have a height higher than the height of the top of the floor slab of the floor of the Building on which the Terrace Space is located, (y) shall not generate an ambient noise level greater than NC-40 within the interior of the Building and (z) shall not emit any fumes into the interior of the Building, (vii) Tenant acknowledges that applicable Laws may limit the amount of space on the terrace that may be occupied by Tenant and may impose additional restrictions on Tenants use of the Terrace Space and Landlord makes no representations to Tenant about how much of the Terrace Space Tenant may be permitted to occupy and what other restrictions may be applicable to the use of the Terrace Space pursuant to applicable Laws and (viii) Tenant's use of the Terrace Space shall be conditioned upon Tenant or Tenant's Affiliates or any permitted assignee or subtenant occupying the entire Terrace Space Floor and the entire floor located directly above the Terrace Space Floor.

(c) Tenant shall be permitted, at Tenant's expense, to landscape the Terrace Space or any portion thereof; provided, that (i) such landscaping shall not result in any leakage of water beyond the Terrace Space and (ii) Tenant shall take all reasonable precautions, at Tenant's expense, to prevent any such leakage.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first written above.

Landlord:

ONE HUDSON YARDS OWNER LLC

By: /s/ Andrew Cantor

Name: Andrew Cantor

Title: Vice President

Tenant:

INTERCEPT PHARMACEUTICALS, INC.

By: /s/ Mark Pruzanski

Name: Mark Pruzanski

Title: CEO

Tenant's Federal Tax I.D. No.:

22-3868459

**EXHIBIT A**

**DESCRIPTION OF LAND**

**EXHIBIT B-1**

**FLOOR PLANS**

These floor plans are annexed to and made a part of this Lease solely to indicate the Premises by outlining and diagonal marking. All areas, conditions, dimensions and locations are approximate.

**EXHIBIT B-2**

**APPROXIMATE RENTABLE SQUARE FOOTAGE OF PREMISES**

The following rentable square footages are approximate and subject to final determination upon measurement in accordance with the provisions of the Lease.

<b>FLOOR</b>	<b>APPROXIMATE RENTABLE SQUARE FOOTAGE</b>
23rd Floor	28,427
24th Floor	28,427
25th Floor	28,427
<b>TOTAL:</b>	<b>85,281</b>

**EXHIBIT C**

**RULES AND REGULATIONS**

**EXHIBIT D**

**STANDARD CLEANING SPECIFICATIONS**

**EXHIBIT E**

**DELIVERY CONDITION**

**EXHIBIT F**

**HVAC SPECIFICATIONS**

**EXHIBIT G**

**ELEVATOR SPECIFICATIONS**

**EXHIBIT H**

**CHARGES FOR LANDLORD SERVICES AND PERSONNEL**

**EXHIBIT L-1**

**TENANT DESIGN STANDARDS**

**EXHIBIT I-2**

**CONSTRUCTION RULES**

**EXHIBIT J**

**INSURANCE MINIMUM COVERAGE AND LIMITS**

**A. Insurance to be Maintained by Tenant Pursuant to Section 4.02(f) and Section 7.02 of the Lease**

**(i) Workers Compensation Insurance:** providing Statutory Benefits, as required by applicable Law, and Employer's Liability Insurance.

Coverage A	Statutory
Coverage B	Employers Liability
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 each Employee

**(ii) Commercial General Liability:** including Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury Liability, Host Liquor Legal Liability, written on an occurrence form, with a combined single limit of no less than \$1,000,000 each occurrence, and \$2,000,000 general aggregate per policy period and Fire Damage Liability limit of not less than \$100,000 any one fire, or such higher limits as the Landlord may from time to time request. The policy will be on the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG 0001, or its equivalent. Policy shall include coverage for all "pollution" hazards usual to mold.

**(iii) Products and Completed Operations Liability:** written on a claims made form, \$1,000,000 each occurrence, and \$1,000,000 aggregate, or such higher limits as the Landlord may from time to time request

**(iv) Commercial Automobile Liability:** including owned, hired, and non-owned coverage with a limit of liability of no less than \$1,000,000 per occurrence. Such policy shall include coverage for contractual liability. This coverage must include all automotive and truck equipment used in the performance of the work under this Lease, and must include loading and unloading of same.

**(v) Umbrella Liability:** shall be written on no less than a follow form basis (no more restrictive than the underlying Employer's Liability, Commercial General Liability and Commercial Automobile Liability) with a Limit of Liability of \$10,000,000 per occurrence and in the aggregate, or such higher limits as Landlord may from time to time request.

**(vi) Property Insurance:** Property insurance shall be purchased, on an "All Risk" form of policy (including coverage for acts of terrorism), for all merchandise, equipment and other Tenant's Property from time to time located in, on or about the Building and all Fixtures installed by or on behalf of Tenant, under a policy or policies in the amount of 100% of replacement cost without deduction for depreciation of such merchandise, equipment, other Tenant's Property and Fixtures. Such policy or policies shall name Landlord and any Superior Mortgagees and Superior Lessors as loss payee as their interests may appear. Such property policy or policies shall include coverage for earthquake/earth movement, demolition and increased cost of construction due to a change in law or ordinance, sewer back-up, extra expense and expediting expense.

**(vii) Business Income Insurance:** Business income insurance shall be purchased, (A) covering all risks required to be covered by the insurance provided for Section (vi) above; (B) in the aggregate amount, for a period of 12 months following the insured against peril, of one hundred percent (100%) of all fixed rent and additional rent to be paid by Tenant hereunder; and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to Tenant's Property and Fixtures has been repaired, the continued loss of income will be insured for 360 days or until such income returns to the same level it was at prior to the loss, notwithstanding that the policy may expire prior to the end of such period.

**(viii) Boiler and Machinery:** (for Boiler and Machinery used exclusively by Tenant) At all times Tenant shall maintain boiler and machinery insurance on a blanket basis covering the sudden breakdown of all equipment, machinery and apparatus consisting of, but not limited to boilers, heating apparatus fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment in an amount not less than the full replacement or functional cost thereof. Such coverage shall include business income insurance (A) covering all risks required to be covered by the insurance provided for in Sections (v), (vi) and (vii) above; (B) in the aggregate amount, for a period of 12 months following the insured against peril, of one hundred percent (100%) of all fixed rent and additional rent to be paid by Tenant hereunder; and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to Tenant's Property and Fixtures has been repaired, the continued loss of income will be insured for 360 days or until such income returns to the same level it was at prior to the loss, notwithstanding that the policy may expire prior to the end of such period.

**B. Insurance to be Maintained by Tenant's Contractors Pursuant to Section 4.02(f) of the Lease**

Any contractor, subcontractor (of any tier), design consultant, sub-consultant (of any tier), and any other party performing work in the Building on behalf of Tenant is a "Tenant's Contractor" for purposes of this Lease.

**(i) Insurance to be Maintained by Tenant's Contractors**

**(a) Workers Compensation Insurance:** providing Statutory Benefits, as required by applicable state law and Employer's Liability Insurance.

Coverage A	Statutory
Coverage B	Employers Liability
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 each Employee

**(b) Commercial General Liability :** including Contractual Liability, Products and Completed Operations Liability (which may be a separate policy), Broad Form Property Damage, Personal and Advertising Injury Liability, Host Liquor Legal Liability, written on an occurrence form, with a Combined Single Limit of no less than \$ 1,000,000 each occurrence, and \$2,000,000 general aggregate per project, per location and \$2,000,000 Products Completed Operations aggregate, Fire Damage Liability limit of not less than \$100,000 any one fire, or such higher limits as the Landlord may from time to time request. The policy will be on the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG 0001, or its equivalent. Policy shall include coverage for all “pollution” hazards usual to mold.

**(c) Commercial Automobile Liability:** including owned, hired, and non-owned coverage with a Limit of Liability of no less than \$1,000,000 per occurrence. Such policy shall include coverage for contractual liability. This coverage must include all automotive and truck equipment used in the performance of the work under this Lease, and must include loading and unloading of same.

**(d) Umbrella Liability:** shall be written on no less than a follow form basis (no more restrictive than the underlying Employer’s Liability, Commercial General Liability and Commercial Automobile Liability) with a Limit of Liability of \$5,000,000 per occurrence and in the aggregate (or \$25,000,000 with respect to any Tenant’s Contractor performing structural work in the Building), or such higher limits as Landlord may from time to time request.

**(e) Builders Risk:** Builders Risk shall be purchased (if not covered under Tenant’s property policies) on an All Risk Policy including “Soft Costs” form for all work performed, in amounts not less than 100% of the full completed value of the work including materials and equipment stored on or about the job site, while in transit to the job site and while stored away from the job site. Policy shall include coverage for increased cost to repair or replace due to a change in law or ordinance, earthquake, and flood.

**(ii) Insurance to be Maintained by any Tenant’s Contractor which is an Architect or Design Professional**

**(a) Professional Liability:** Shall be purchased by all Architects and Engineers for Professional Liability Errors and Omissions in an amount not less than \$2,000,000 each claim and annual aggregate for the lead architect or consultant and \$1,000,000 each claim and annual aggregate for all sub-consultants, per project with a maximum deductible of \$10,000, including punitive damage coverage and contractual liability coverage, without limitations. The policy shall have a retroactive date that precedes the start of the design services. Such Errors & Omission policy shall be maintained in full force and effect for the lesser of 6 years or the statute of limitations from the date the relevant work is completed. Any sub-consultant shall maintain Architects’ Errors and Omissions Professional Liability which is no more restrictive than the prime consultant’s policy.

**C. Requirements Applicable to All Insurance Required Pursuant to this Lease**

**(i) Additional Insureds:** The General Liability and Umbrella Liability policies required hereunder must name Landlord, The Related Companies L.P., Oxford Hudson Yards LLC, Mitsui Fudosan America, Inc., MFA 55 HY LLC, 55 Hudson Yards Member LLC, any Superior Lessors, any Superior Mortgagees and any of such entities' subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, and assignees, and such other entities hereafter as may be reasonably requested by Landlord (collectively, the "Additional Insureds"), as additional insureds. Coverage afforded to the Additional Insureds shall apply on a primary basis. Tenant's Contractors shall provide Endorsement form CG 20 10 11/85 (Form B) or its equivalent and must provide coverage within the Products and Completed Operations coverage section.

In the event Tenant and/or any of Tenant's Contractors, maintains limits greater than set forth herein, Landlord and the then Additional Insureds shall be included therein as additional insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

**(ii) Self Insured Retention:** Tenant shall have the right to satisfy its insurance obligations under this Lease by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as: (a) such self-insurance is permitted under all laws applicable to Tenant and/or the Property at the time in question; (b) such self-insurance is in compliance with any customary minimum insurance requirements imposed upon Landlord by Landlord's lender(s); (c) Tenant maintains a net worth (as shown by its financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000.00); (d) unless such information is already generally available to the public, Tenant shall, not less than annually, provide Landlord an audited financial statement, prepared by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied, showing the required net worth; and (e) such self-insurance provides for loss reserves that are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any self-insured exposure shall be deemed to be an insured risk under this Lease. The beneficiaries of such insurance shall be afforded no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder (including, without limitation, the protection of a legal defense, by attorneys reasonably acceptable to beneficiaries, and the payment of claims within the same time period that a third party insurance carrier of the quality and caliber otherwise required hereunder would have paid such claims). The waiver of subrogation provided for hereunder shall be applicable to any self-insured exposure. All self insured retentions must be acceptable to and approved in writing by Landlord prior to use and the insurance required under this Lease must be maintained in excess of such self- insurance retention.

Any and all deductibles and/or self insured retentions for the insurance policies described in this Exhibit J shall be assumed by and for the account of Tenant or any Tenant's Contractor, as applicable, at the sole risk and expense of such entity.

**(iii) Terrorism Coverage:** All coverage required herein shall include coverage for certified acts of terrorism.

**EXHIBIT K**

**APPROVED CONTRACTORS**

**EXHIBIT L**

**SECURITY SPECIFICATIONS**

**EXHIBIT M-1**

**FORM OF SUPERIOR MORTGAGEE SNDA**

**EXHIBIT M-2**

**FORM OF SUPERIOR LESSOR SNDA**

The Superior Lessor SNDA shall be in substantially the same form and content of Exhibit M-1 to the Lease, with reasonable and customary revisions to reflect the fact that the Superior Lessor SNDA relates to a Superior Lease as opposed to a Superior Mortgage.

**EXHIBIT M-3**  
**FORM OF PILOT SNDA**

**EXHIBIT N**

**FORM OF CONFIDENTIALITY AGREEMENT**

**EXHIBIT O**

**FORM OF LETTER OF CREDIT**

**EXHIBIT P**

**LEED-RELATED REQUIREMENTS FOR ALTERATIONS**

**EXHIBIT Q**

**INTENTIONALLY OMITTED**

**EXHIBIT R**

**INTENTIONALLY OMITTED**

**EXHIBIT S**

**LOCATION OF CAPPED VALVED OUTLETS**

**EXHIBIT T**

**LIST OF BASE BUILDING DRAWINGS**

**EXHIBIT U**

**DESIGNATED SHAFT SPACE**

**EXHIBIT V**

**FORM OF LANDLORD'S NON-DISTURBANCE AGREEMENT**

**EXHIBIT W**

**EXISTING SUPERIOR RIGHTS**

**EXHIBIT X**

**RATED PARTITIONS AROUND BUILDING CORE**

**EXHIBIT Y**

**LIFE SAFETY SYSTEM**

**EXHIBIT Z**

**HOIST IMPACTED AREA**

EXHIBIT AA

TERRACE SPACE

**CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES**

We did not record earnings for the years ended December 31, 2016, 2015, 2014, 2013 or 2012. Accordingly, our earnings were inadequate to cover fixed charges for each period. The amount of the deficiency by which our earnings did not cover our fixed charges for each such period is disclosed in the table below.

	<b>Years Ended December 31,</b>				
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	<b>(in thousands)</b>				
Deficiency	\$ (412,830)	\$ (226,429)	\$ (283,226)	\$ (67,792)	\$ (43,643)

For purposes of calculating the ration of earnings to fixed charges, earnings are calculated as follows: (i) adding (a) pretax income (loss) from continuing operations; (b) fixed charges; (c) amortization of capitalized interest; (d) distributed income of equity investees; and (e) our share of pretax losses of equity investees for which charges arising from guarantees are included in fixed charges; and (ii) then subtracting from such sum (A) interest capitalized; and (B) any net income attributable to non-controlling interests. Fixed charges are calculated as the sum of (1) interest costs (both expensed and capitalized); (2) amortization of debt expense and discount or premium relating to any indebtedness; and (3) that portion of rental expense that is representative of the interest factor.

This information should be read in conjunction with our consolidated financial statements and the accompanying notes incorporated by reference in this prospectus.

**SUBSIDIARIES OF INTERCEPT PHARMACEUTICALS, INC.**

Intercept Italia S.r.l, an Italian entity

Intercept Pharma Europe Ltd., a United Kingdom entity

Intercept Pharma UK & Ireland Ltd, a United Kingdom entity

Intercept Pharma Ltd, a United Kingdom entity

Intercept Pharma Canada, Inc., a Canadian entity

Intercept Pharma Switzerland GmbH, a Swiss entity

Intercept Pharma Deutschland GmbH, a German entity

Intercept Pharma France SAS, a French entity

Intercept Pharma Austria GmbH, an Austrian entity

Intercept Pharma Spain, S.L.U., a Spanish entity

Intercept Pharma Portugal Unipessoal Lda., a Portuguese entity

Intercept Pharma Danmark ApS, a Danish entity

Intercept Pharma Nederland B.V., a Dutch entity

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**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Intercept Pharmaceuticals, Inc.:

We consent to the incorporation by reference in the registration statements on Form S-8 (No. 333-184810, No. 333-188064, and No. 333-206247) and Form S-3 (No. 333-194974) of our report dated March 1, 2017 with respect to the consolidated balance sheets of Intercept Pharmaceuticals, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2016, and the effectiveness of internal control over financial reporting as of December 31, 2016, which reports appear in the December 31, 2016 annual report on Form 10-K of Intercept Pharmaceuticals, Inc.

/s/ KPMG LLP

New York, New York  
March 1, 2017

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## CERTIFICATIONS UNDER SECTION 302

I, Mark Pruzanski, M.D., certify that:

1. I have reviewed this Annual Report on Form 10-K of Intercept 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: March 1, 2017

/s/ Mark Pruzanski

Mark Pruzanski, M.D.

President and Chief Executive Officer

(Principal Executive Officer)

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## CERTIFICATIONS UNDER SECTION 302

I, Sandip Kapadia, certify that:

1. I have reviewed this Annual Report on Form 10-K of Intercept 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: March 1, 2017

/s/ Sandip Kapadia

Sandip Kapadia

Chief Financial Officer

(Principal Financial and Accounting Officer)

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CERTIFICATIONS UNDER SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of Intercept Pharmaceuticals, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report for the year ended December 31, 2016 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 1, 2017

/s/ Mark Pruzanski

Mark Pruzanski, M.D.  
President and Chief Executive Officer  
(Principal Executive Officer)

Dated: March 1, 2017

/s/ Sandip Kapadia

Sandip Kapadia  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

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